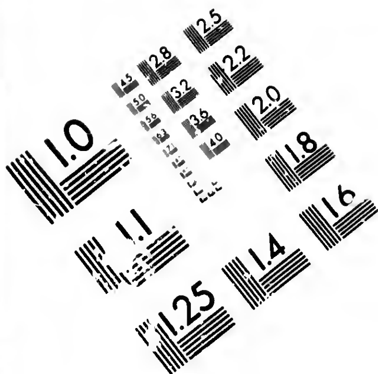

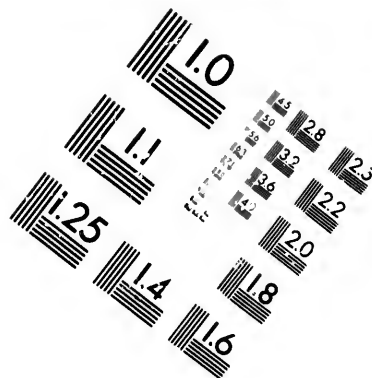

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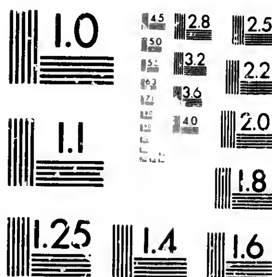

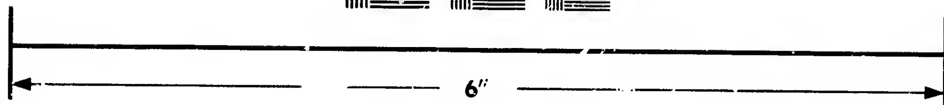

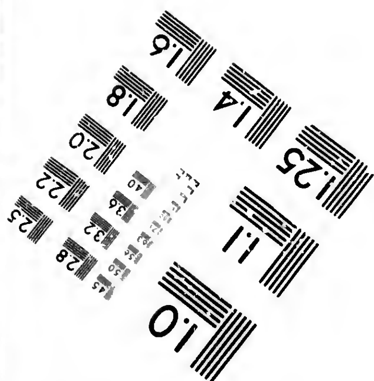

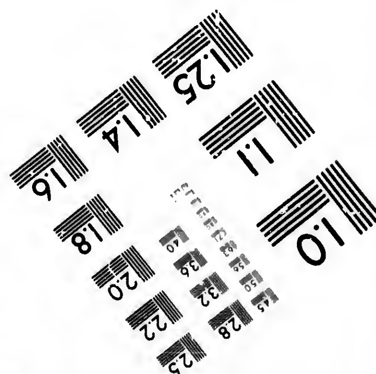

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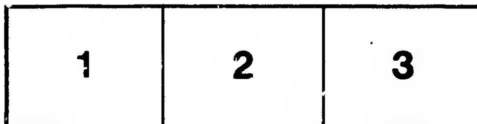

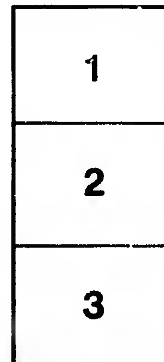

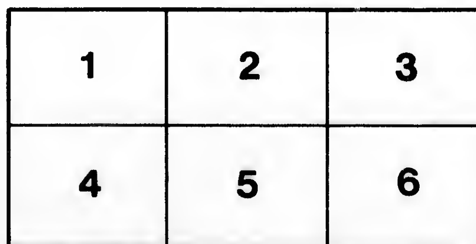

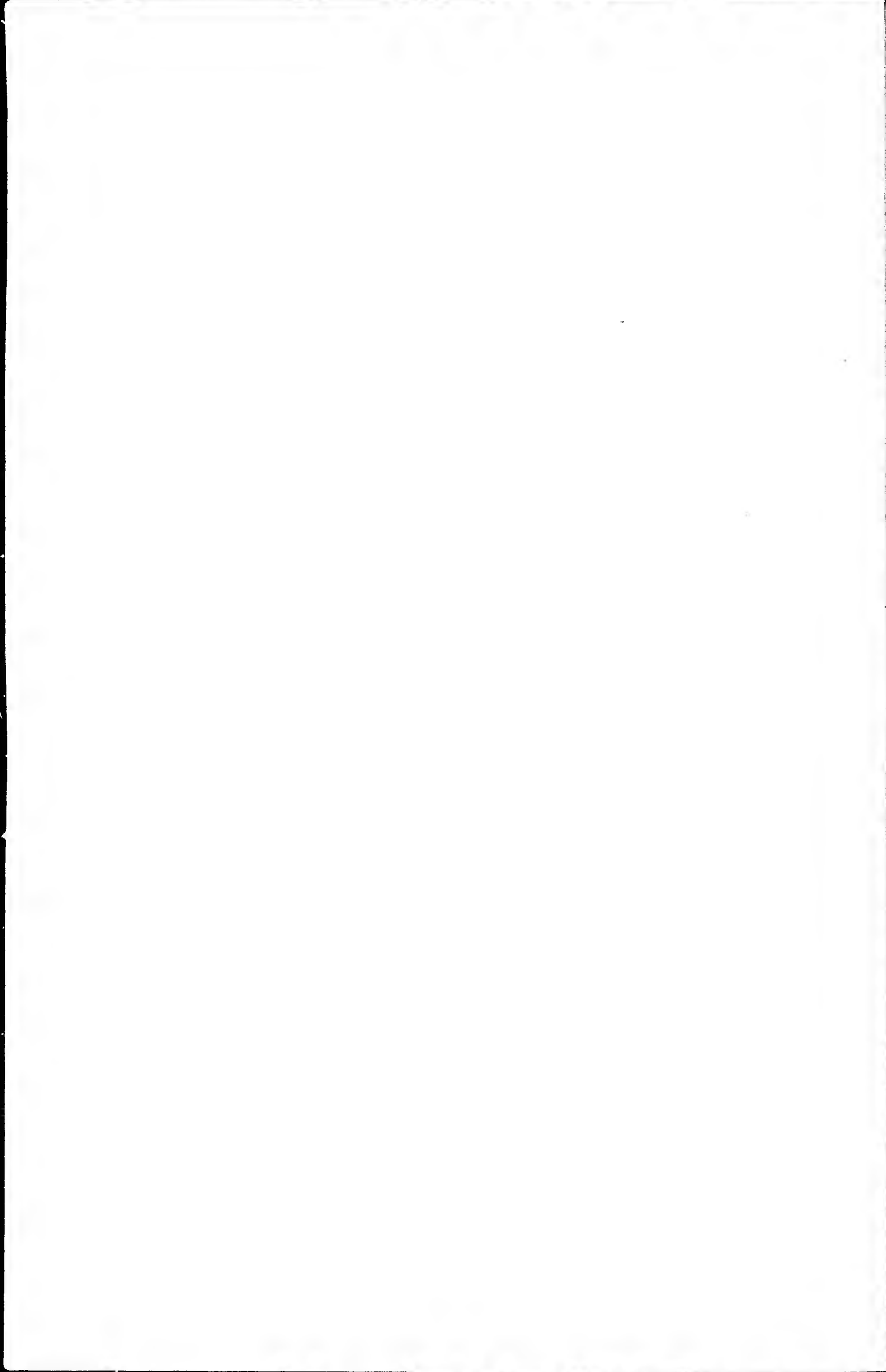

THE BEAUTIES

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ADMINISTRATION OF THE LAW

IN

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AND

THE BENEFIT CONFERRED UPON THE COMMUNITY BY THE SELECTION OF THE BEST JUDGES,

AS EXEMPLIFIED IN THE CASE OF

WILLIAM BROWN,

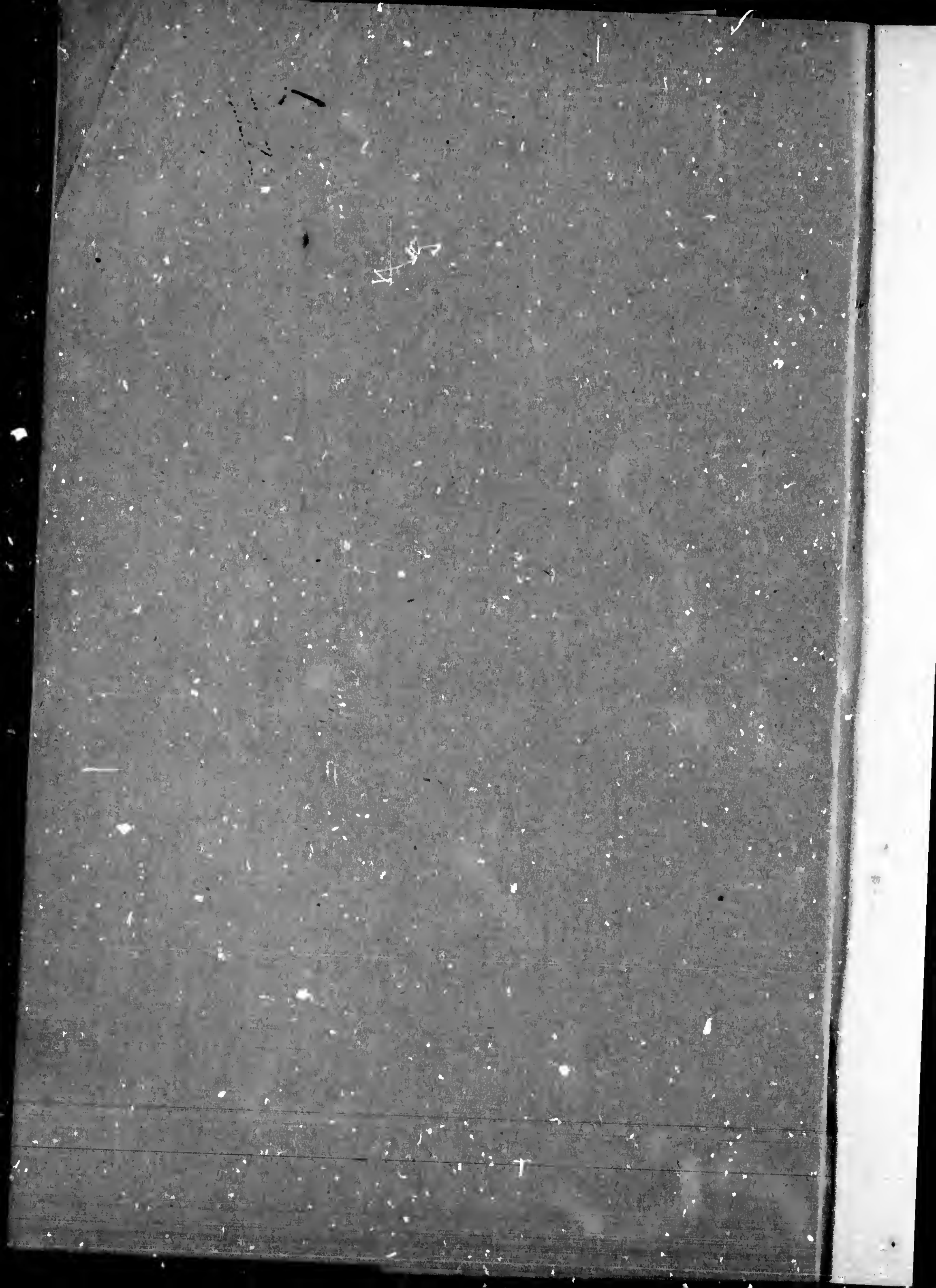
PLAINTIFF,

VS.

BARTHOLOMEW CONRAD AUGUSTUS GUGY,

DEFENDANT.

DURING UPWARDS OF FIFTEEN YEARS OF LITIGATION.



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DEDICATION.

Dedicated to Hugh Allan, Esquire, who, as the projector and founder of the Montreal Ocean Steamship Company, is the benefactor of all the Canadas.

My Dear Allan,

By letter, dated London, 30th April, 1862, your obliging partner, Hugh Montgomerie, Esq., informed me that "before undertaking the "prosecution of my case (he meant my defence in a contest with wealth and power) "any firm (of solicitors) of good standing would require £500" sterling. I could not raise a tithe of that sum, and was in despair; but with characteristic generosity, you came to my relief, and by furnishing me *on credit* with eight consecutive cabin passages in your steamers, you enabled me to defend myself.

You are not yet fully paid, but you have saved me from ruin; and while publicly acknowledging the very great service which I have received at your hands, I beg that you will read the following account of some of the sufferings of

Your obliged and very grateful friend,

A. GUGY.

— *Re* —

WILLIAM BROWN,

Plaintiff,

vs.

BARTHOLOMEW CONRAD AUGUSTUS GUGY,

Defendant.

The litigation between the above named parties has been frequently noticed by the press, but always in a manner so brief and meagre as to convey no accurate notion of its form and pressure. It would appear indeed that, to this hour, multitudes believe the plaintiff Brown to be a much injured defendant, and the defendant Gugy is daily compelled to affirm and explain that he is not the aggressor.

No later than Monday, 13th January, 1868, the leader of the *Chronicle* newspaper contained a paragraph giving an erroneous impression of the conduct of the defendant. " An obscure stream" it was said, " had acquired a " European celebrity from the determined persistence with " which two neighbors upheld their conflicting ideas of the " rights derivable from its course and action." " The deter- " mined persistence," thus imputed to both parties as a fault, is ascribed to the defendant fully as much as to the plaintiff Brown, an inaccurate and offensive statement to which the defendant cannot submit in silence. Accordingly, having offered for publication a few words of explanation, tending to show that the plaintiff Brown was the aggressor, which the editor rejected, the defendant is driven to the necessity of giving a much abridged—but he hopes an intelligible—account of the facts involved in the case. Some of those facts may and doubtless will be deemed incredible. On reference, however, to the Prothonotary, or to the Clerk of the Court of Queen's Bench, who are both bound during office hours to give the public access to the records in their custody, the veracity of the narrator can in a *trice* be tested. As to the

Judges of whose misconduct some specimens will unavoidably find their place in the following narrative, should they be dissatisfied, let them endeavor to bring the writer before a Jury if they dare.

Practically irresponsible, possessing the power while presiding in Court, to fine and imprison—without bail or mainprize, those great men feel that whatever may be the statements which they may hazard, no man, especially no counsel, having a due regard for his liberty or his fortune, dare contradict them.

The Judges of the Province of Quebec who decide questions of *fact* as well as questions of law, may, therefore, with impunity, when pronouncing judgment, shroud themselves in a mantle of darkness. They may ignore, overlook, or misrepresent important facts, or for that matter the whole case, but the advocate who should make any attempt to correct them would probably be ruined. The following pages will be found to contain some conclusive proofs of this dangerous faculty—a faculty of which the writer of these lines has been the victim, as in the broad light of the jury box he could, and will if necessary, plead and prove. Crimes and criminal accusations are in Quebec invariably tried by Jury; but on the the civil side of the Court that form of trial is the exception not the rule. Now in the presence of an intelligent jury the most truculent and drunken Judge dare not directly misre present any fact. As every Juror hears the evidence at the same time with the Judge, the Jury operate as a check upon the judge. He could not, therefore misrepresent undetected, and he would be restrained by the conviction that he could not. But evidence taken by the ordinary course of *Enquête* may require as in this case, months or years. It is seldom taken in the presence of an audience nor is any one interested in taking notesor even in remembering the language of the witnesses. Then when the Judge himself in his private apartment deals with the testimony, he may put upon it, or affect to put upon it, any interpretation that he pleases. He may affect to believe a witness evidently utterly devoid of intelligence and even of principle, or he may pretend to doubt one remarkable for both. He may supply or omit a negative or an affirmative at pleasure, and give to the words of parole

or written evidence any signification that he may choose or desire. Should he be accused or even detected, he would plead *error in judgment* which, whatever wrong he had done, whatever ruin he had wrought, would cover all shortcomings. Consequently, good habits, probity, impartiality, and moral courage, are qualities much more, infinitely more desirable and necessary in the Judges of the Province of Quebec, than in Judges of any part of England or Ireland or of English. America. Drunkenness, it is plain, is an absolute disqualification, nor could the kindred of a Judge found drunk upon the bench, justly complain were he hanged outright upon the nearest tree.*

But for obvious reasons, that sobriety, that probity, that impartiality and moral courage, are more desirable, more necessary to the minority in the state, wherever there exists a minority, than to the majority. Now, in this province, owing to the exisistence of two nationalities, two languages, and (lumping all the Protestant denominations) of two religions, the minority may be exposed to evils by which the majority can never be threatened. The minority, the exponents of whose opinions speak and print in a language not understood by the other class, are not only thus unable to disseminate their opinions among the majority, but are exposed to every description of detraction and misrepresentation. Not only the minority has no lever, but the leaders of the majority, the priests, possess the most powerful levers. One of these levers is the

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* No power on earth can compel a freeman—or indeed any man—to respect what is not respectable. As I can't respect, and will not respect, the Bench on which a drunkard may be sitting, so I can't be expected to respect the laws of a country in which no judge can be brought to trial and punishment for any possible crime that he can commit. It is to the despair incident to that fatal omission in the law, that the recommendation in the text is due.

Intending to bring about results, I shall put a case—institute a comparison between a drunken or bad judge on the one hand, and a highwayman or pickpocket on the other. The latter may rob you, it is true; but they can only take what you have about you—your watch—or the money on your person. They can't take your farm or your house, or your bank-stock; but a bad judge can do all that. Then, as against the highwayman or pickpocket you can defend yourself with your fists, your club, or your revolver—your manhood enables you to contend against them. But how can you defend yourself against a bad judge? Then, as against the highwayman or pickpocket you have the hue and cry, the police, the constabulary; but you can't bring a bad judge before any tribunal whatever. Act as he may, you can't do that. I've tried it.

ecclesiastical right to absolve for perjury. Of this power it is enough for the present, to say that the contemplation of its existence, of the possibility of its use on all occasions, of the probability, if not the certainty, of its exercise on certain occasions, must occupy the judicial mind engaged in weighing evidence. Among the Protestants, this power is unknown, and Protestants are necessarily, were it only from their resistance to this clerical pretention, excluded from those sympathies which grow up in countries inhabited by a homogeneous population, and which enable men, on fitting occasions, by combining, to resist oppression. What interest, it may be asked, can Roman Catholics of the French race, take in protecting from oppression, an English Protestant? Secure in their parliamentary majority, they may impeach and punish, but the minority can only hope for justice, which is the *best part of freedom* from the independent, vigorous action of the Judicial Bench. Should the members of a court (of any court) be hostile to an individual, as, for instance, to the writer of these lines, should they substitute their mere will for the law, as certain judges have done, he must suffer, but he will not suffer alone, for judgments become precedents which may be cited to the prejudice of multitudes. In this view of the case, society at large may be interested in the events which are hereinafter related, but the minority is doubly interested in facilitating the exposure of bad Judges, and in contributing to the establishment of checks upon all Judges.

It seems then to be undeniable that, as those who are destitute of parliamentary influence, are the most exposed to judicial oppression, so they are the least likely to obtain redress. But when, in the assured progress of events, all the administrators of the law, from the Deputy Sheriffs, who summons the jurors *selected by their principal*, to the Chief Justice, who may charge and impel them in any direction, at his pleasure, are, as they certainly will be, members of the majority, what will be the chance of the suitor or counsel, who may belong to the minority? Even now, counsel are occasionally selected, not because of their capacity or information, but because they are agreeable to the Court, and parties involved in litigation have not disdained to propitiate the summoning officer. In a community so divided, the influence of that official may be sufficient under cover of a regard for

religion or a love of country, to create in the minds of witnesses and jurors, (who may all calculate on absolution), a dangerous bias. A remedy for such evils can only be found in the excellence of the judges; but those in whom the appointments are vested, are evidently unmoved by the desire to ensure the purity of the administration of justice.

Recently, what is called a political necessity, occurred. A man of intellectually low degree, a member of the cabinet, having lost his election, felt that common justice required that he should be provided with a seat in parliament at the public expense. He accordingly proposed to a well known member of the bar, the resignation of his seat in the senate in exchange for a judgeship. They were both, of course, members of the majority, and here there was no question of fitness, no desire to secure a good judge. It was a mere bargain. So true is this statement, that the Cabinet Minister having, of course, sufficient influence to raise another man, a member of the Commons, to the Legislative Council, thus created the desired vacancy, and the embryo judge became an abortion. Had it been otherwise, the nomination would certainly have taken place, quite irrespective of the public interest. Now it would seem to be scarcely necessary to import, all the way from Ireland, a very big man, at a salary of $50,000, and pickings for relatives and dependants, merely to sanction such jobs, such desecration of what was once extolled as the Royal Prerogative.*

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* To indulge in any hope of success, it behoves me, in the first place, to neutralize those prepossessions, and to disarm those prejudices which necessarily flow from the respect in which the judges in Upper Canada are justly held.

I would accordingly submit that no two classes can differ more widely, with some exceptions, than the judges of Lower Canada do from the judges of the Upper Section of the Province. That I may not appear to stand alone in this opinion, I would here cite that of an eminent judicial character, held in profound veneration in a neighbouring province. In reference to this subject, Judge Haliburton uses the following language :—" The present practice in Canada is, beyond comparison, the " worst that can be found in any country. A seat on the Bench is now " a political prize, and the dominant party claims it for partizans. None " of those high qualifications so essential to the efficient and respectable " discharge of judicial functions, neither talent, learning, nor integrity, " are recommendations equal to political services." In relation to what he calls " the mode of appointment which imperial folly, ignorance, or negli- " gence, has permitted the politicians of Canada to adopt; he writes noth-

But it may be said in future nominations, a due regard will always be shown to the minority. Should this improbability take place, the candidates will be selected from the class of hypocrites, dastards, and snobs, who have, in all ages, been found crouched at the feet of power ready to propitiate it. Some judges may be taken from the ranks of the minority, but they will be selected with a view to prove the moral and intellectual inferiority of the class. Instruments will be chosen ready to carry out the favorite projects of the majority, a policy in which the dominant race are so clearly interested, that they cannot fail to adopt it.

As has been noted, members belonging to the minority can expect little sympathy, and even when invited to give some account of the causes of his difficulties and his long suffer-

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" ing can be so ruinous, either to the respectability of the Bar or to the " efficiency of the Bench, as to make a seat on the latter dependant on " violent partizan conduct or coarse popularity, instead of eminence in " the profession." To Lower Canada, inhabited as it is by two distinct races professing different creeds, the foregoing remarks must be admitted to apply with peculiar force. Were either race to be convinced that the other was preferred, were the lawyers elevated to the judgment seat to be selected from one race, the other would assuredly feel alarmed, and some social convulsion might be expected to follow: nor would any admixture of apostates from the other class lessen the evil. Justice is, however, the first interest of man. In the arrangement for its administration, it is much more easy to obviate than to repair evil, and the best guarantee that the community can have, is the rectitude of the judge.

In the event of any measure unfavorably affecting commerce, Boards of Trade in various localities would be ready to represent the evil in all its magnitude; were the medical faculty, or the legal profession, but menaced, corporate bodies charged with their interests would make the whole land vocal with their cries; were the Church concerned, touch but a single brick of the sacred edifice, and Right Reverend Prelates, attended by docile laymen, priests and choristers, without number, would rise to imprecate eternal curses upon the authors of so much impiety. Public sympathy extends its protection even to the very vilest criminals arraigned for felonies punishable with death: but who is there to represent the woes of the unfortunate suitor ruined by judicial misconduct?

Among the victims of judicial corruption there is, there can be, no bond of union. Each engrossed by the sense of his own wrongs and by the sorrows of his family, absorbed in the contemplation of the misery entailed on his helpless children, feels that he owes too much to them to take any interest in the fate of his fellow-sufferers. Accordingly all those wretched fathers, and not a few no less wretched mothers, concealing their tears, weep in private in holes and corners, as rats die.

The appointment of Monsieur Bossé, deprecated in the text, having taken place, the above written reflections may not be considered altogether inopportune.

ing, the writer has found that he merely excited merriment. Some people indeed, like the editor of the *Chronicle*, affected to wonder that he should so long and so tenaciously have defended his property, the birthright of his children.

But such wrong as by means of the abuse of the law he has endured, may be inflicted on others. He ventures to add that, had he been obliged to depend on professional assistance during upwards of fifteen years of litigation, he must have been ruined.

It is this consideration—this conviction *that his sufferings may be beneficial to others*, which has compelled him to appear over his own name in print.

Let there be no mistake, Mr. William Brown *was* the PLAINTIFF. He brought his first suit on the 30th of October, 1852.

He, Brown, the plaintiff, represented "that he and the "defendant (Gugy) were neighbors separated by the River "Beauport. He alleged that he was proprietor in possession "of a mill on the South West Bank, and that the defendant "Gugy held the Domaine Farm on the opposite or North "East Bank.

"The plaintiff Brown, complained of the building, by the "defendant, on the said north east bank, in the course of the "summer of that year (1852) of a wharf which "nearly tra-"versed the whole of the River Beauport," which wharf "materially altered the natural course of the said river, "which narrowed the channel—which prevented the waters "of the said river from running down the natural channel, "and confined the channel to so small a breadth that, when-"ever the river became high, the waters receded and were "thrown back upon the mill, so that the mill could not be "turned or worked."

On the day of the return, (12th of November, 1852,) Messieurs Holt and Irvine appeared as attorneys for the defendant.

Owing to subsequent events this appearance of those two attorneys should be noted.

Messieurs Holt and Irvine, having so appeared, pleaded as follows:

1st. That the wharf so built by the defendant "did not traverse or project into the river," but was "situated wholly upon his own property."

2nd. That the plaintiff himself having previously "erected "a pier or wharf upon his, (the plaintiff's) side of the river, "which wharf extended into the river to a great distance, "and forced the waters against the land of the defendant, "*it became necessary for the defendant* to erect the wharf "which he so built, *for his own protection.*"

3rd. That if the current or channel of the river, "had "been changed in any way to the prejudice of the plaintiff, "that such change and prejudice had been caused by the "plaintiff himself and not by the defendant."

Such were the questions submitted for the decision of the Court.

The action was pending in the Superior Court seven years and three months, and on the 1st February, 1860, it was dismissed.

But on the 27th of September, 1854, Messieurs Andrews and Campbell had been substituted to Messrs. Holt and Irvine, as attorneys for defendant.

And on the 8th of May, 1856, Mr. T. R. Smith had been substituted to Messrs. Andrews and Campbell, as attorney for defendant.

The defendant thus had been represented in the cause by five different attorneys—a fact which should be remembered.

The plaintiff produced twenty-five witnesses—the defendant thirty-nine.

But the Court not being satisfied, prepared certain questions and referred them to three experts, Messieurs Baillarge, Wallace and Stavely. These experts required evidence, and before them the plaintiff produced nineteen witnesses—the defendant six.

Thus the record contains eighty-nine depositions.

The parties also filed a nearly equally ponderous mass of documentary evidence.

No abridgement which could be made would be sufficiently succinct to ensure the attention of the general reader, but two facts may be cited at a venture.

The defendant resided during seventeen years entirely in Montreal. His farm at Beauport, was in the hands of servants. They were not all perhaps equally indifferent or unobservant, but it was only after a considerable interval, that the defendant was informed that the plaintiff Brown, having

acquired the above described mill, had in the year eighteen hundred and fifty (during the absence of the defendant) built a wharf on his side, (on the South West side) of the river.

The defendant Gugy might no doubt have brought his action for the removal of the wharf so built by his neighbor, but fearing the law's proverbial delay, and having no confidence in the judiciary, he decided on building for his protection entirely, and did build *two years afterwards* a defensive wharf. Of this defensive, this protective wharf, the plaintiff Brown complained immediately.

The late John Racey, Esquire, grandfather of the present Dr. Racey, who had lived thirty years at Beauport, *twelve of them on the very spot*, (a witness produced by the plaintiff Brown himself) declared on oath, the wharf so built in 1850, by the plaintiff Brown, to be " an encroachment on the River " Beauport, of about twelve or fifteen feet."

To compress this statement within readable bounds, the defendant will restrict himself to one other citation from the evidence.

Etienne Langevin, deposes:

TEXT.	TRANSLATION.
" J'ai connaissance que dans l'été " de 1850, le demandeur a fait faire " un quai de son côté de la rivière " Beauport, c'est-à-dire du côte Sud " Ouest. C'est moi qui ai commen- " cé le quai avec Étienne Bédard " et Chamberland."	I know that in the summer of 1850, the plaintiff (Brown), caused a wharf to be made on his side of the River Beauport, that is on the South West side. It was I who began that wharf with Etienne Bedard and Jean Chamberland.
" Le courant de la rivière passait " dans la place ou nous avons bâti " le quai, de sorte que le quai a été " bâti dans le chenail de la rivière. " Au meilleur de ma connaissance, " le quai empiète sur le chenail de " la rivière, environ de douze à " quinze pieds. Dans le milieu il " y a plus d'empiétation qu'ailleurs " parceque le quai fait un rond. " L'effet de ce quai n'est pas bon " pour le défendeur, car ce quai " envoie l'eau de la rivière sur la " propriété du défendeur.	The current of the water flowed on the place where we built that wharf, so that the wharf was built in the channel of the river. To the best of my knowledge the wharf enroaches upon the channel of the river from about twelve to fifteen feet. In the centre there is more enroachment than elsewhere, because the wharf bulges out. The effect of this wharf is not good for the defendant, because that wharf directs the water of the river against the property of the defendant.
" Je suis positif à dire que ce quai " est plus au nord-est, c'est-à-dire	I positively say that this wharf is more to the north east, that is to

"plus du côté du défendeur que "n'était le chenail de la rivière "avant que ce quai fut bâti.

"En bâtissant ce quai j'ai remar. "qué qu'il entrait sur le chenal de "la rivière. J'ai eu occasion de "voir le demandeur alors. Il venait "nous voir tous les jours, c'était "lui-même qui nous conduisait. Au "commencement de la bâtisse de "ce quai, c'est-à-dire en plaçant "les plus basses des flottes, j'en ai "parlé au demandeur. Je lui ai "dit, M. Brown, nous sommes un "peu au nord-est de la rivière, et "là-dessus, dit-il, je fais ça pour "chasser l'eau. Il me dit de pren- "dre des cailloux qu'il y avait dans "la rivière et de les mettre dans le "quai pour chasser l'eau du côté "du défendeur. En la chassant "ainsi du côté du défendeur le "demandeur éloignait de son ter- "rain le chenal de la rivière. En "éloignant ainsi l'eau de chez lui "et la chassant du côté du défen- "deur, le demandeur faisait man- "ger le terrain du défendeur. J'ai "remarqué aussi des grosses pierres "amassées du long de ce quai en "dehors d'icelui et aussi derrière le "hangard de pierre, ce qui avait "l'effet de chasser l'eau encore plus "du côté du défendeur.

"Lorsque j'ai dit que nous avons "rempli le quai bâti par le deman- "deur en mil huit cent cinquante, "je veux parler de "pierres." Nous "l'avons rempli de la pierre que "Louis Grenier, charretier de Beau- "port, a charroyé."

say, more towards the side of the defendant than the channel of the river was before the building of that wharf.

While building this wharf, I remarked that it encroached upon the channel of the river. I then had occasion to see the plaintiff. He came every day to see us making the wharf; it was he himself who directed us. On commencing the wharf, that is to say, while laying the lowest floats, I spoke upon the subject to the plaintiff. I said to him, Mr. Brown, we are a little to the north east of the river, and thereupon, he answered, I do this to drive away the water. He directed me to take some boulders which were in the river, and to put them into the wharf to drive the water over to the side of the defendant. By thus driving the water over to the side of the defendant, the plaintiff removed the channel of the river farther away from his, (the plaintiff's) property. By thus removing the water from his property, and driving it to the side of the defendant, the plaintiff caused the land of the defendant to be eaten away. I also remarked that large stones were piled along this wharf, on the outside of it, and also behind the stone store, which had the effect of driving away the water still more over against the side of the defendant.

When I said that we had filled the wharf built by the plaintiff in 1850, I mean to speak of "stones." We filled it with stones which Ls. Grenier, carter of Beauport, carted.

The foregoing words, recorded as they fell from the mouth of the witness, justify a few lines of explanation. That the plaintiff Brown did encroach by the building of that wharf, would seem to follow from the words: "We filled it with stones." The same Mr. Racey adds, "I positively state that the wood work (of that wharf) was filled with stones and rubbish, part of which was taken off my property." Now, had the wharf been built close to the bank, no filling in no stones or rubbish would have become necessary, but such a

necessity would arise in the case of an interval or space between the bank and a wharf built in the river at a distance from the bank of that river.

He scooped out the boulders and stones all along on the defendant's side of the river, he piled those stones on his side, and to those stones he added others, thus preventing the river from flowing on his side, and so repelling it he forced it to flow on the defendant's side. In some places the plaintiff actually obstructed half of the breadth of the river. Then as soon as the defendant to protect himself, commenced to build a wharf on HIS OWN BANK, the plaintiff Brown brought his action.

The defendant's land being alluvial, might have greatly suffered, nor could the loss or the extent which might be carried away by the water be calculated. It is evident too, that the acts described by the witness were aggressions, and serious intentional aggressions, on the part of the plaintiff Brown. There were many others which may be hereafter noticed, but the defendant will only pause to remark the singular effect of the erection of that wharf on the minds of these witnesses of the plaintiff Brown, who were, as most of them were, uneducated and stolid.

They were induced to assume that this wharf of the plaintiff Brown, built in 1850, the site of which was one of the subjects in controversy, was the true line of the bank of the river, nor could they apparently see that, as the plaintiff Brown had built a wharf on his side of the river, the defendant might two years afterwards do the same on the other side, on his own ground. It is owing to this cause that the defendant was obliged to summon from among the more educated classes so many witnesses.

It is not the intention of the defendant to fight the battle over again, but to give such a summary of the case as to make it intelligible, and to prepare the mind of the reader for the eventual decision.

The judgment dismissing the action of the plaintiff Brown, was followed by an appeal, and this appeal was decided on the 1st February, 1861.

The cause had then been pending upwards of eight years.

The circumstances of this judgment are interesting, and the defendant earnestly desires that they may be all noted.

They are related at length in the XI Volume of the Lower Canada Reports, page 401.

Chief Justice Lafontaine pronounced the judgment, and having intimated that in the opinion of the majority of the Court, the judgment dismissing the action of the plaintiff Brown must be confirmed, he proceeded to discuss the claim to costs made by the defendant's attorney, page 407.

TEXT.	TRANSLATION.
"*Notre jugement reconnaît que* " *M. Gugy a droit à des honoraires* " *en Cour de première instance, car* " *là il a comparu par un autre avocat* " *et procureur,* mais il lui refuse " des honoraires dans cette Cour, " parce qu'ici, ayant comparu lui- " même, il n'a comparu et n'a pu " comparaître que comme partie. " Le jugement est rédigé de ma- " nière à établir une règle qui puisse " s'appliquer à tous les cas, que la " partie a un procès ait agi elle- " même dans une partie de ce procès " ou qu'elle ait agi par avocat ou " procureur dans une autre partie. Le jugement est comme suit:	*Our judgment acknowledges that Mr. Gugy is entitled to fees in the Court of first instance, because in that Court he appeared by another advocate and attorney,* but it refuses fees in this Court, because here having appeared in person, he has appeared and could only appear as a party. The judgment is so worded as to establish a rule which may be applicable to every case, whether a party to a suit has appeared in person in a part of the suit, or has appeared by attorney in another part. The judgment is as follows:

" Seeing that in the judgment of dismissal of the action of " the appellant, in the Court below, with costs, from which " the present appeal hath been brought, there is no error, it " is considered and adjudged by the Court, now here, that " the same, to wit, the judgment rendered in the Superior " Court sitting at Quebec, on the first day of February, one " thousand eight hundred and sixty, be, and the same hereby " is, affirmed with costs in both Courts; in *the taxing whereof* " *no attorney's or other fees, upon any of the proceedings or* " *hearings had in either Court, shall be allowed to the res-* " *pondent by reason of his being a practising attorney, and* " *of his having personally conducted his own defence.*" *

The reasoning of the Chief Justice and the text of the judgment comprehend two propositions. The merits of the controversy between the parties which had been decided by the Court of first instance is the first of these propositions.

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* The italics not to be found in the originals have been resorted to for the purpose of directing the attention of the reader to the contradictory affirmations contained in the documents above cited.

The judgment dismissing the action of the plaintiff Brown is confirmed. He failed in the first court, he fails in the second. It must be admitted too, that this question had been regularly submitted in due course of law. The appellant Brown had been heard in support of his appeal according to the practice of the Court.

The other proposition that the respondent was not entitled to fees, did not, *most certainly did not* originate with the Bar—it had not been—it was not raised—it was not even mentioned by the Counsel of Brown, the plaintiff and appellant. This is a question which the Court submitted to itself, or which some Judge of the Court submitted to the Court. As all lawyers know judges are prohibited from supplying exceptions, and as the conclusion—the claim for costs (including fees) formed part of the very first document filed by the respondent Gugy, upon the institution of the appeal by Brown, it was naturally to be inferred that the appellant Brown acquiesed, or at least that he did not object to the claim to fees. He had time and opportunity to object, and being represented by three Counsel, the two Messieurs Pentland and Mr. Bossé, it is not too much to say, that the personal, spontaneous, *ex mero motu* interposition of the Court, or of any member of the Court, was not called for. Such an interposition on the part of a Court or of any one of its members, always savors of a preconceived opinion, of a foregone conclusion. The Court should at least have allowed the respondent Gugy an opportunity to defend himself, and it should have assigned a day for hearing him. The Court omitted this part of the ordinary programme, for it condemned the attorney to lose his fee without hearing him. The Court too, violated a rule as old as civilized Society, for it went out of its way to know a party to a law suit. In every statue, every representation of justice, a bandage over the eyes originally conceived by classic taste, indicates that judges—honest judges are not to know—are absolutely to ignore parties. The decision of every question is to be governed by the fact and the law, irrespective of the rank or quality, of the wealth or poverty, of the power or weakness of either of the parties. That's the rule. Now every part of the record which was filed by the respondent was subscribed A. Gugy, attorney for respondent, and it surely did not follow that

the respondent and the attorney were one and the same person.

But as the Court dealt with the subject unfairly in matter of form, so it decided illegally, decided contrary to law. The Judicial Committee of the Privy Council, Her Majesty the Queen in Council, has since judicially formally declared that the attorney who brings an action in his own name is entitled to fees. To speculate upon probabilities would extend this report too far. Either the three judges, Lafontaine, Aylwin and Duval, knew what the law was or they did not. They have no enviable choice of alternatives.*

Referring now to the reasoning of the Chief Justice, the reader will remark at page 407, an admission that in the Court of first instance, that is, the Superior Court, the defendant Gugy had been represented by another Advocate—the words are "*un autre Avocat et procureur.*" As the Chief Justice, although he mistook the law, evidently meant to be honest, he need not be reproached for misapprehending the fact—that the defendant had been represented by five different attorneys. But the respondent complains that the Chief Justice allowed a judgment to be entered, and actually concurred in a judgment which in terms pronounced the very reverse of what he stated. The judgment in which he concurred denied to the attorney fees in both courts, on the ground "of his having personally conducted his own defence." But this is not all. The Chief Justice uses these words: "Our judgment acknowledges that Mr. Gugy is entitled to "fees in the Court of first instance, because in that Court he "appeared by another advocate and attorney." Now the judgment in question does no such thing, but it, on the contrary, contradicts the Chief Justice flatly. Did he ever read the judgment? Do honorable judges deal in that free and easy way with judicial proceedings? If he believed what he wrote, who introduced in the judgment the words "no "attorney's or other fees upon any of the proceedings had in "either Court?" Who gave the lie to the Chief Justice and committed a forgery in a legal document of such high authority as a judgment?

In open Court, seated between the two above named

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* See Vol. 17, L. C. R. page 33, and Appendix C.

Judges, Chief Justice Lafontaine stated plainly and distinctly that they both concurred in his judgment. That judgment rested, as he declared, upon the fact that Mr. Gugy had been represented in the Court of first instance by *another advocate* or *attorney!* As those two other judges had chosen of their own accord to raise the question of the right to fees of an attorney who conducted his own defence, they were bound to enquire, to ascertain whether the defendant had appeared in person or by attorney. Had they enquired they would have ascertained that the Chief Justice was right, and that the defendant had not conducted his own defence in the Court of first instance, but had, in fact, been represented by five attorneys. Those judges, it would seem, found it more easy to decide the question than to verify the fact upon which it rested, and accordingly they agreed upon the judgment herein above cited. Hence, as has been seen, fees are denied to the defendant in *both* Courts, upon the unfounded pretext that he had, in both Courts, conducted his own defence.

Presuming that Chief Justice Lafontaine spoke the truth, the undersigned has a right to enquire and to know when these two judges retracted—why, that is, with what design —for what purpose they changed the nature, the words, the sense of the judgment, and by what arguments, by what persuasion they imposed upon the Chief Justice so far as to induce him to concur in a judgment based upon a statement which he knew to be false. But if the Chief Justice did not so stultify himself as to sanction a judgment affirming and deciding precisely the reverse of what he had officially and publicly declared from the bench, that his judgment did acknowledge, affirm and decide, how, and by whose orders was it published, entered and recorded as it appears in the Lower Canada reports, page 408 of the eleventh volume?

Admitting, hypothetically, the criminality of the exercise of the right of self-defence—granting that it behoved two men of the *moral* status, of the FASTIDIOUSLY DELICATE MORAL sense of Messieurs Jean Francois and Aylwin to decree and inflict an instantaneous punishment commensurate with the enormity of the offence, it does not follow that these most worthy *custodes morum* could in their zeal justly base their two decrees upon two distinct falsehoods. Judges have been

seen drunk on the judicial bench in the Court of Appeal, the supreme criminal and civil Court of Lower Canada; but it does not appear that on the above-mentioned occasions the two judges in question could take shelter under that congenial excuse.

At this point, then, this narrative, begun in the third person, must be continued in the first, and I, Gugy, who write these lines as a warning to other judges, and in the interest of my posterity, hereby tell those two judges that in both those judgments of which they have assumed the paternity they have lied!

And if the British flag be not a mere bit of bunting, idly flaunting in the breeze, but the real emblem of liberty, of free institutions administered in an English spirit, those two judges must be hurled from the bench. Let those who dread the advancing tide of annexation look to it!

As a man of action, and somewhat of a horseman, at much sacrifice and amid many perils, I certainly have labored to preserve British connexion. But what have I now to fear from Yankees or from Fenians? They can't use me worse than the trusted functionaries of an English monarch have done.

No intelligent reader can fail to observe that the two functionaries whom I thus deliberately and intentionally brand, performed the three several parts of accusers, of witnesses and judges. It might also be asked why they were allowed to record falsehoods without contradiction or protest? But they had, and have still the power to fine and imprison for any real or imaginary offence against their dignity committed in open Court, a risk to which no man is bound to expose himself.

And they calculated on the silence of their victim, for they knew the terror which they inspired. But they forgot that men will occasionally borrow courage from despair, and that having done me all the injury in their power, I have now, in my 72nd year, the less cause to fear them. It is thus, then, that in the above-mentioned and other causes, they deprived me of some thousands of dollars, thereby necessarily offering great encouragement to my oppressor.

Now, costs are intended to operate somewhat as a compensation to the successful party, and somewhat to the discour-

agement of unjust litigants. In these causes the plaintiff Brown, however, was much cheered and encouraged, for he got law cheap, and though he failed, he has worried me for upwards of fifteen years. And I, his victim, suffered because I was able to defend myself; when, had I employed other attorneys, the expense must have wrought my ruin, a FRIGHTFUL PREDICAMENT.

But the same question presented itself in another cause, in which one John Ferguson, a miller, had been plaintiff in the Superior Court against the same defendant. This Ferguson had been examined in the first mentioned cause as a witness on behalf of the plaintiff Brown, Ferguson's employer. During his examination circumstances occurred which had induced him to bring an action for defamation—for being, as he alleged, charged with the commission of *perjury* by the defendant Gugy. Upon this appeal Ferguson failed, and was condemned to pay costs. But here again, as in the former case, the judgment contained the following words:—" in the taxing whereof no attorney's or other fees upon any of the proceedings or hearings had in either Court, shall be allowed to the appellant by reason of his being a practising attorney, and of his having personally conducted his own defence." See vol. xi, L. C. Reports, p. 420.

In this case the snuff-taking, somnolent Chief Justice does not appear to have made any remarks. Nevertheless, the words " personally conducted his own defence," can only apply to the Superior Court, to the Court below, or Court of first instance. Now the record, open to the inspection of all the world, can, and upon reference thereto will prove that in this last, as well as in the first mentioned case, the defendant Gugy appeared *not personally but by attorney.*

Here again—hap what may—I brand the two same Judges as intentional liars.

Thus far I have dealt with the fact alone. The decisions depriving me of fees were, however, supported by no law. In addition, therefore, to the foregoing imputations on their veracity, of which every man, in a free country, has a right to judge and speak, I now charge those two Judges with profound ignorance of the law upon the question which they so summarily decided.

When the first of the above mentioned judgments was

pronounced, and the appellant Brown had appealed on the merits to Her Majesty the Queen in Privy Council, I was desirous of instituting a cross-appeal from that part of the judgment which denied me fees. But Brown had then sued me several times—he was known to have become my creditor—his servant, Ferguson, had also been induced to sue me—my goods and chattels were all under seizure, and desperate attempts were made to sell them. Brown's wealth was known to be immense, and his hate implacable, and I had incurred that hate by pertinaciously resisting his attempts to deprive me of my property! But, above all, two of the Judges of the Supreme Court were evidently unfavorable to me. Discouraged by the unpromising aspect of my affairs, all the friends upon whom I had any claims refused to become my sureties, and even advised me to submit. Yielding to necessity, I crossed the Atlantic six times, and at length, when the hearing of the cause could no longer be deferred, having the good fortune to appear in person before the Judicial Committee, argued my cause, and won it.

It was so argued on the merits alone, and as there was no cross-appeal, the question of the denial of fees was not mooted, but as the sequel will prove it was eventually decided in another cause.

Editors of newspapers, who have refused to give publicity to my complaints, have led me to believe that lawyers can't justly expect any public sympathy. Admitting that there may be cause for the exhibition of indifference to the sufferings of one of the class—the public may be expected to feel for itself. My claim to fees was as well founded in right and justice, as the claim of the baker for bread furnished to a family. If the judges can be so independent of public opinion as to break the law by denying, on false pretences, the claim of a lawyer, they may hereafter ignore the baker's bill, or the grocer's, or the butcher's, for they all rest upon the same principle. Then it ought to be remembered that it [was] not as a lawyer, but as the proprietor of real estate, that [I] was thus entangled in litigation; and, in fact, that I have been for upwards of fifteen years, standing sentry, as it were, on my property. The judgment of which I complain, involves the admission that had I been defended by any other, that other would have been paid. He might, or he might

not, according to the impression produced at the moment on the judicial mind. But A, B, or C, who feel that they may have a lawsuit, and, if successful, would naturally desire that their professional defender should be paid by their adversary, may well pray that the decision of so important an incident as the costs of the action, should be put out of the reach of judicial caprice. Purse-pride may sneer at the enunciation of a proposition, in which the rich may take, or affect to take, little or no interest, but to the poor it is a vital question. A man—a family in humble life exposed to oppression—would frequently be unable to find a defender, were it not that that defender could justly hope for remuneration out of the pocket of the rich wrong-doer. If, however, the judges have the power to break the law—as they have done in my case—where, unless it should please God to bless these my humble efforts—where is the limit to that power? But if all lawyers are expected to be and remain mere servile sneaks, and all judges to be arrogant irresponsibles, there can be no limit to that power.

Nor can the most successful suitor be certain that all his disbursements will, under the most favorable circumstances, be refunded. There are always, or at least there generally are, what the French call "faux frais," costs taxable against the successful party. For example, his attorney by mistaking one date or document for another, assumes an untenable position, and is obliged to amend. Mistakes will occur, but the adversary, however unjust his original proceeding in bringing the suit may have been, is not bound to pay the costs incident to such mistakes. On the contrary, he has a claim to costs on the incident, and though the eventual decision on the merits should be unfavorable to him, his attorney can exact the costs on the amendment, and the successful suitor must pay them. Or witnesses may be produced, or plans, deeds, or other documents may be filed, which, after the event, a judge who took no part in the decision of the suit, may consider superfluous or unnecessary, and on that ground, tax the costs thereof, not against the wrong-doer, but on the injured party, the successful litigant. It will be found that in this way I have lost many hundreds of dollars. Then disbursements are unavoidable. Suitors must pay for copies of documents—must satisfy the prothonotary,

sheriff, bailiffs, and the amount allowed to witnesses—frequently, as in the cases in question, a considerable sum. The case may last sixteen years, and the disbursements, according to the legal rate of interest, be doubled. But, although I hold and feel that the law justifies a claim for interest on costs, I have tried it, and found the Court against me—on what grounds I was not informed and can't guess. The public then, if it has eyes to see and ears to hear, must perceive that it has an interest, or at least that thousands have an interest in the immediate adoption of remedial measures for the removal of the evils thus brought under its notice.

A celebrated moralist has, in immortal verse, enquired—

"What can ennoble knaves, or fools, or cowards ?"

and necessarily answered the question in the negative. This quotation has been suggested by a sort of idolatry which is as extravagant as it is pernicious. People who are not confined in lunatic asylums are to be met with in multitudes who absolutely worship a bit of sheepskin twelve inches by nine. It is called parchment, it is true, and it is also true that it is used for the purpose of writing the commissions of the Judges. Take the meanest wretch whom wealth and whiskey have enabled to purchase a seat in the Legislature—an habitual drunkard—or an habitual liar—let his name be but inserted in the blank left on such a bit of sheepskin and high cocolorum, he becomes an object of veneration. He is absolutely worshipped—and the bit of sheepskin proves to be possessed of a power denied to all the blood of all the Howards. This idolatry, this reverence for what is figuratively termed "the Bench," will doubtless militate against me in my present effort to bring about some salutary change in the manner of naming the Judges, and to place their nomination, in the Province of Quebec, upon the ground of fitness alone. The first step in the cure of disease, is the assurance of its existence and some knowledge of its causef Hence it was necessary that I should give some account of the evils, to the existence of which I could bear testimony. Thus, then, I complain of the conduct of some of the Judges, of the grounds upon which persons have been selected to fill that office, and conscious of the difficulties by which I am

surrounded, I have offer an explanatory extract from a petition to the Legislature, which I never could induce any member to present.*

Wealth ensures many advantages, and the possession of more or less of power. In England, the appellant Brown was represented by the three eminent solicitors, Messrs. Bischoff, Cox, and Bompas. The Attorney-General, Sir Roundel Palmer, was his leading counsel, Counsellor Bompas the junior. Being too poor to obtain professional assistance, I filed a personal appearance, of which I now hold a certified copy. I also prepared my case in this country, and proposing to defend myself as best I could alone, I myself exchanged cases with the solicitors of my adversary. But a London solicitor, of his own accord, contrived to substitute his appearance to mine; and as I could not inaugurate my appearance in the Royal Court by a dispute with one who called himself my solicitor, nor, if so disposed, had I the time, I was obliged to submit.

That solicitor made a good thing of it, charging, £84 and being allowed, £67 6s. sterling for perusing eighty-four printed sheets! But, although I had in person, arrayed in gown and wig, addressed the Court, the taxing officer allowed me no fees—no, not even a viaticum; although I had crossed the ocean six times for the express purpose of arguing my case.

The judgment was confirmed, as is herein above mentioned, in March 1864.

The account of this first cause, which bore the number 533 and which then had been pending upwards of eleven years' must now be interrupted to notice other but similar events.

Quite confident of success, the plaintiff Brown, in January 1854, brought a second writ against me for the same cause of action. The same stream, the same wharf, the same pretended damage formed the burthen of his second suit, which bore the number 183. In the first suit the plaintiff Brown demanded the demolition of my wharf; in the second, £500 damages, "without prejudice, however, to any right of "action which the plaintiff Brown might thereafter have "for future damages should the defendant (Gugy) continue "to obstruct and impede the current of the said river by "continuing the said wharf," &c., &c., &c.

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* Vide note at page 7.

Thus it became necessary to plead to this second action—to go over the same ground, to subpœna witnesses, to seek for them, bring them up, pay their respective taxations, to examine them, to cross-question those of the plaintiff, to procure deeds, documents and plans, and eventually to argue the cause.

All this labor was performed, and on the first of February 1860, this second action of the plaintiff Brown was dismissed with costs.

Being wealthy, and having the means to give security, he appealed.

Upon that appeal the respondent necessarily expended more money, prepared another factum, and once more submitted his case, and once more the original judgment was affirmed, with costs. The respondent Gugy, however, was denied fees upon all the proceedings taken by himself personally.

The judgment in appeal was pronounced on the 13th December, 1861; but (such is the influence of wealth) the appellant Brown on the 16th obtained leave to appeal to the Queen in Her Privy Council. It was not until the 17th March, 1862—upwards of eight years after the institution of that second suit—that it was finally decided; and it was so decided only by proving that he had not taken proceedings on the appeal to Her Majesty the Queen.

But the reserve of *the right to bring more actions* was serious, and on the 30*th of October*, 1855, the plaintiff Brown brought a third action against the same defendant. It bore the number 325, and related to the same River Beauport, and to its course and current between the property of the plaintiff Brown and his neighbor. Of course this third action necessitated on the part of the defendant the same exertions as in the former cases; nor could he possibly have avoided a calamitous result had he not labored as before to avert it. This third action, like the first (under the number 533) may be called a double action, for after the adduction of all the evidence which the parties could procure, the Court referred the question to three experts. Hence a second series of attendances, of examinations, and of cross-examinations of witnesses, was entailed upon the defendant, and infinite quibbling and difficulty ensued.

At length, however, on the 16th April, 1862, this third action of the plaintiff Brown was dismissed. It had then been pending nearly seven years.

The plaintiff Brown, of course, appealed, but at length, on the 15th June, 1863, this third judgment in favor of the defendant was confirmed.

Nevertheless, the appellant Brown (blessed or cursed with immense wealth) a third time applied for and obtained leave to appeal to Her Majesty the Queen, in her Privy Council. Hence the contestation in this third suit could not be brought to a close until the respondent had proved to the satisfaction of the Court that the appellant Brown had not proceeded upon this last appeal, namely, upon the 12th March, 1864. This third cause had then been pending upwards of eight years.

The plaintiff Brown had now failed seven times—including one judgment pronounced by Her Majesty in Her Privy Council—dated in March, 1864.

He was, however, "of his own opinion still," and on the 25th of May, of that very same year, that is, about two months after the date of the Queen's decision, the plaintiff Brown brought another action against the same defendant. It is scarcely credible, but true. The suit bears the number 581, and this time the cause and subject of the suit were precisely the same as in the first action 533—decided in England only two months before. There was, however, a pretended additional grievance, namely, that a part of wharf of the defendant Gugy, had slipped.

Two pleas were consequently filed:

1. That the slipping of the wharf was caused by the persevering efforts of the plaintiff Brown, in intentionally forcing the water against the defendant's property and thus wearing away his land.

2. That the question raised by this new suit had been adjudicated upon and settled by previous judgments of the Courts in Canada and in England. This is the plea known to lawyers as *Res Judicata*, or *chose jugée*.

Here again a painful task was imposed on the defendant, and he was compelled by documents, plans, and parole, as well as written evidence, to prove the identity of the causes of ac-

tion set forth in the two suits. Accordingly he labored, and eventually the question was submitted for decision to Mr. Justice Stuart. Having heard the parties, on the 4th of February, 1865, he pronounced judgment dismissing the action of the plaintiff Brown.

Here again, however, the defendant was made to feel the power of wealth, and the plaintiff Brown, who had retained Mr. Parkyn, a lawyer of great ability, brought this judgment for revision before a then recently constituted Court composed of three judges. This proceeding entailed on the defendant, who continued to conduct his own defence, considerable additional labor and anxiety. However, that Court, composed of Messrs. Justices Badgley, Stuart, and Taschereau, by a majority of two, reversed the previous judgment, and condemned the defendant Gugy to pay costs. This occurred on the 5th of April, 1865.

The parties being thus directed to proceed *de novo*, the defendant re-commenced the task which he had already performed three times. Here, however, an incident, not absolutely unprecedented, but an incident worthy of record, occurred.

Brown, the plaintiff, had specifically alleged that he had built in the year 1850, the wharf which compelled the defendant, acting in self defence, in 1852, to make another wharf on his own side. Examined, on oath, the plaintiff Brown had admitted that upon the spot, on which he had so built in 1850, there had not existed—there had *not* previously existed—any wharf. He, however, was always well supplied with witnesses, and in the teeth of his own declaration, he produced four witnesses, two of whom swore that the wharf which he declared that he had so built, was "very, very old, and had been built by his predecessors." The two other witnesses described, with great circumstantiality, an old wharf, upon the line of which, they positively swore, that they had erected the new one. Against these two last a Grand Jury found true Bills for perjury—a just conclusion, but one entailing on me additional labor.

Briefly alluding to this subject, merely to illustrate the difficulties of my position, and to prove the unavoidable anguish which I must have suffered, I proceed to state that on the 10th of October last, Mr. Justice Taschereau, before

whom the merits had been argued during four days, finally dismissed this action. As I have said, it bears the number 581.

Pausing for a moment to count the cost, I would note its progress. It lasted upwards of three years. It was first dismissed, then maintained, then dismissed again.—FACT.

On the first dismissal, a bill of costs to which I was entitled, was incurred, but owing to the judgment in revision, I lost the amount.

On the Judgment in Revision, another bill of costs was incurred. This time my adversary was entitled to it, and I was compelled to pay his bill losing mine.

On the third judgment there was nominally another bill of costs. But it did not cover more than two-thirds of my claim, irrespective of the first above mentioned amount which I lost, of the second which I paid, and of the third which I could not recover.

But the plaintiff Brown, had in the interval, bought up my debts, and upon one which he had acquired from the late Archibald Campbell, Esquire, notary, he obtained judgment, seized, and was about to sell.

Here, however, he was foiled, and upon an opposition signed and conducted by myself, he was condemned to pay costs—including a fee of forty-six dollars. At his instance, the Prothonotary—citing the precedent of the Court of Appeal—that is, the decision herein above first mentioned, denied me that fee. But Mr. Justice Taschereau, to whom the question was submitted, reversed the decision of the Prothonotary, and allowed the fee.

An opportunity for an appeal to the Court of Queen's Bench, whose *opinion was well known to be unfavorable* to me, was thus offered and instantly availed of. Having no kind of respect for the majority of that Court, I expected from the first to be obliged to appeal to Her Majesty the Queen in Council, but I argued my case carefully, submitting many books, ancient and modern, of great authority. As was to be expected, those books produced no effect, and Mr. Justice Taschereau's judgment was reversed. That reversal was the subject of a judgment altogether unique, a perfect gem in its way, containing so many proofs of the intellectual superiority of the Judges of the Supreme Court of the then

Province of Lower Canada, now Quebec, that it ought not, and will not, be withheld from an admiring community. Here follows an exact copy of that judgment, word for word, as it was written by his Honor the Honorable Judge Aylwin, and duly recorded.

PROVINCE OF CANADA, }
Lower Canada. }

COURT OF QUEEN'S BENCH.

(APPEAL SIDE.)

Friday, the nineteenth day of December, One thousand eight hundred and sixty-two.

PRESENT:

The Honorable Mr. Justice AYLWIN,
" Mr. Justice MEREDITH,
" Mr. Justice MONDELET,
" Mr. Justice BERTHELOT, *Suppleant*,
" Mr. Justice BADGLEY, *ad hoc.*

No. 89.

WILLIAM BROWN, of the Parish of Beauport, in the District of Quebec, Merchant,

Plaintiff in the Court below,

and

BARTHOLOMEW CONRAD AUGUSTUS GUGY, of the said Parish of Beauport, Esquire, Advocate,

Defendant in the Court below,

and

the said WILLIAM BROWN,

APELLANT,

and

the said BARTHOLOMEW CONRAD AUGUSTUS GUGY, opposant *afin d'annuller*, and the said Bartholomew Conrad Augustus Gugy, as such opposant, appellant, to the Superior Court, from the taxation of the costs of the sa d opposant in the said cause, by the Prothonotary of the said Superior Court, had and made in the said cause,

RESPONDENT.

" The Court of Our Lady the Queen, now here, having heard
" the parties by their Counsel, respectively, examined as well
" the records and proceedings in the Court below as the rea-
" sons of appeal filed by the appellant, and answers thereto,
" and mature deliberation, on the whole, being had : Seeing
" that, by law and practice, no fees can be allowed to Counsel
" and Attornies, in cases in which they act as attornies of
" record in the cause, and that, therefore, there is error in the
" judgment by which the respondent has been allowed costs
" in his favor : It is considered and adjudged that the said
" judgment, to wit, that rendered by the Superior Court at
" Quebec, on the second day of November, One thousand eight
" hundred and sixty-one, be reversed, set aside, and annulled ;
" and, proceeding to render the judgment which the Court be-
" low ought to have rendered : It is considered and adjudged
" that the bill of costs by which the sum of eleven pounds and
" ten shillings currency be rejected, from the costs claimed by
" the said respondent ; and included in the opposition ; and
" that the taxation of the Prothonotary be affirmed, with costs
" to be borne by the respondent in favor of the said appel-
" lant, as well in the Court below, as in the Court here, and,
" lastly, it is ordered that the record be remitted, to the intent
" that it may be done what to law and justice may appertain in
" the premises. Mr. Justice Mondelet dissenting, and the
" Court, on motion of Messrs. Parkin & Pentland, grant them
" *distraction de depens* in this cause."

The very first proposition enunciated in the foregoing judgment is false, or it is nonsense, or both. If it could be true, " that no fees can be allowed to counsel or attorneys in cases in which they act as attorneys of record in the cause," on what occasions are fees to be allowed ? Are fees to be allowed when they do *not* act as attorneys. But changing one preposition and one noun, I shall put a case which will go deep into the judicial pocket. Suppose that a majority of hilarious legislators should enact that " no salary should be allowed to *judges* in cases in which they *act* as *judges of* the cause," what a barbarous, cruel, and detestable statute that would be, judicially considered ! But men in humble life, men who saw wood, and remove snow, and feed pigs, and who, when attacked, plead their own causes, are fully as much entitled to the fruits of their labour as judges are to their salaries ; and sometimes a great deal more.

That any man with a common English education should have subscribed a document couched in such terms as this judgment, is impossible. It would seem to follow that neither Judges Meredith nor Badgely took the trouble to read a decision not merely depriving me of a large sum to which I was justly entitled, but involving a principle affecting every member of the profession. Looking upon this sort of negligence or indifference as a proof of the perfunctory manner in which judicial functions are performed, I can't affect to conceal my regret and alarm. Judge Mondelet, ever sturdy and true, having openly dissented, is not obnoxious to censure, but the concurrence of Judge Meredith is a painful event. That estimable man and able judge had previously recorded an opinion, couched in lucid and convincing language, sustaining my pretensions. He adhered to that opinion—but bowing to the authority or yielding to the persuasions of men very much his inferiors, or at least upon grounds evidently quite untenable, he acquiesced in a judgment which was contrary to *his* opinion. In the presence of the Lords Justices I took some pains to draw a distinction between him as a gentleman, as a sober, hard working Judge, and the others—and I added what I must not now conceal, that to be a perfect Judge he has only to rely more upon his native worth—his sound judgment and happy instincts.

Judge Badgely, being deaf, is utterly disqualified (on that ground alone) for the Judicial office, and I invite him openly (as hundreds do secretly) to retire forthwith.

Here was a judgment condemning me to pay costs amounting to more than two hundred dollars upon the decision of a question involving only forty-six dollars. That, at least, was intelligible. Judge Taschereau *had not allowed* me costs upon the decision in my favor; but whether the reader can or can not understand the whole of the above written judgment, he can't fail to comprehend that extra particular care had been taken to emphasize the words expressive of my condemnation to pay the costs—in ALL the Courts.

Two friends who had somewhat regained their composure, having become my sureties in Appeal, this last decision was eventually submitted for the consideration of the Judicial Committee of the Privy Council. On this occasion I crossed the Atlantic again twice, and argued, as on the former occa-

sion, my case in person. The Lords-Justices did not blame me for so defending myself, nor was the result for a moment doubtful. The judgment herein above carefully reproduced for the edification of those who have a taste for gibberish, was of course reversed, and my right to fees affirmed.

Thus, then, was an authoritative decision pronounced, which proved and proves that the Canadian judges above named, who denied me my fees in a case against myself, which I defended in person, were ignorant of the law. I take the most charitable view of their conduct: for if they knew the law to be favorable to me, and from mere personal animosity, decided against me, they are great criminals. Many have been immured in the Penitentiary who deserved it less than those Judges would have done, could they have been actuated by mere personal hostility.*

By way of illustration, and adverting to the fact that the Judges of the Court of Queen's Bench are members of the highest court having criminal jurisdiction in the Province, it may be fairly assumed that they are aware of the existence of some difference in the eye of the law between an attack and a defence, between an assault and a parry, between aggression and repression. Now, to put an intelligible case, suppose that, without provocation, I knock down Smith (for I here refrain from using the word Brown) and then prosecute Smith, this prosecution, whether by the ministry of another, or conducted by myself, might justly be considered an aggravation of the offence. But suppose that Smith, *as is proved on the trial, without any provocation*, knocks me down and then prosecutes me, how can I be blamed for defending myself? If I avail myself of the ministry of another, Smith must be condemned to pay to that other a certain fee, fixed by the tariff. But if I charge no more than that fee so

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* Nevertheless, impelled by a love of truth, I must here admit, that on the 9th of November, 1854, a petition was presented to the Legislative Assembly, containing charges of misconduct against Judge Aylwin; and on the 5th of April, 1861, another. I subscribed both, and in sight of the British flag, which then waved, as it does now, on the Citadel, within five hundred yards of the House, both petitions were contemptuously overlooked.

It seems to be thus proved, that for sufferings caused by judicial misconduct, the law affords no redress—does not, indeed, condescend to enquire—or even to listen to complaint.

fixed by the tariff, Smith has no interest in preferring another to me. He was wrong from the first; the Court holds that he is wrong. Being wrong, he deserves punishment for having broken the law; and he who vindicates the law, is entitled, be he who he may, to the compensation fixed by the tariff. This is exactly my case; and to pretend that being able to defend myself, I become guilty of a serious offence, to be visited by a heavy fine, because I don't employ another, is wicked nonsense and perversity—or possibly incipient imbecility. I complain because I suffer, and what with the fees denied me, and my eight sea voyages, that suffering amounts to several thousands of dollars.

Nevertheless, it is so natural to defend oneself when one can, that the very Judge who was most active in imposing upon me that fine—in subjecting me to that crushing loss—was recently seen to descend from the Bench of the Court of which he was and still is a member, to take his place at the Bar, and there, as an ordinary barrister, to sustain by oral argument, pretensions which, as a suitor, he had submitted to that Court—his own Court.

And, when he did so—in his own behalf—address the judges of the Court of which he was a member, he had been —not the defendant, but the plaintiff in the Lower Court, from whose judgment he had appealed.

Under a standing rule of the Judicial Committee of the Privy Council, every Judge from whose decision an appeal has been instituted is bound to transmit to the Registrar of the Court a statement of his opinion—as he *delivered it in Court*. The propriety of the rule is manifest, and it must be evident that a correct opinion correctly expressed would have a sedative tendency, productive of a disposition to refrain from appealing. The most furious of unsuccessful suitors would unavoidably ponder every opinion adverse to his pretentions. Eventually, however firm in his convictions, he would be compelled to admit, that some learning, some argument, could be brought to bear against him. This self-evident fact, and the expense attending every appeal to a transatlantic tribunal, would sooner or later lead to submission —at least as a choice of evils.

But as a proposition may be sustained nearly as much by futility of the grounds of an attempted refutation, as by the

force of the reasoning in its favor, such opinions as Judges in Appeal may have formed, should always be fully expounded for the guidance of the suitor.

Judge Aylwin, and Judge Badgely, and Judge Berthelot, having omitted to perform this duty, were enjoined, or at least requested, through the Registrar of the Judicial Committee, to transmit their opinions. They complied so far as to transmit printed books, to which it is unnecessary to refer. But Judge Berthelot, for reasons which he has not condescended to specify, did not take the trouble to state his views in his own words. He merely wrote at the end of Judge Badgely's book, "I concur in the foregoing opinion," or words to that affect. Judge Badgely must have been highly flattered by this comprehensive assent, but the Lords Justices were not so complimentary. At page 36 of the above cited 17 volume of Reports, their Lordships, having given an abridged account of Judge Badgely's reasons, will be found to have deliberately administered to Judge Aylwin and him, a salutary and well deserved rebuke.

"BUT THEIR LORDSHIPS ARE CONSTRAINED TO OBSERVE "THAT THEY CANNOT UNDERSTAND HOW THESE ARE GOOD "REASONS FOR DISALLOWING TO THE ATTORNEY HIS FEES "FOR SERVICES PERFORMED IN THE COURTS AS AN ATTOR-"NEY."

Such are the very words.

The rule by which all Judges are held to treat all other Judges with an appearance of respect, was not broken in this case without very cogent reasons. The Lords Justices must be presumed to have sufficient ability to distinguish between good reasons and bad reasons, and as they affirm that they can't understand the reasons assigned by Judge Badgely to be good reasons, their Lordships clearly indicate—if they don't in terms declare—that "those reasons" are bad reasons.

Writing for laymen, desirous of stimulating public opinion, anxious to dissipate the cowardice of the multitude, to urge them to overcome their fear of the Judges, to deal and to talk of those public servants exactly as they deserve, I shall now give a sample of Judge Badgely's opinion taken from the same 36th page.—Here, however, a preliminary

explanation may be necessary.—When an attorney has successfully defended a poor man, or a man of whose ability or disposition to pay him, the attorney entertains doubts, he has recourse to a measure called *distraction de dépens.* He thus obtains from the Court an order amounting to an assignment to the attorney of the costs due to the successful suitor by his adversary, which costs, by that order or assignment, become vested in the attorney. This distraction or assignment, so vesting the right to the amount in the attorney, deprives the successful suitor of any claim that he might previously have had. The unsuccessful suitor must pay the amount not to the successful suitor, but to the attorney of the successful suiter.

Bearing this process in mind, the reader will notice that at the top of that 36th page, Judge Badgely is said "to rely on " the circumstance that in the case of an attorney appearing " for himself, the proceeding by way of *distraction de dépens* " would not be practicable because the occasion for it could " never arise."

As I possess none of that kind of talent, which in the Province of Quebec is the peculiar attribute of the Judge, I can't understand how there should arise any cause for lamenting the impracticability of the exercise of a power, for the exercise of which there could never, by any possibility, arise an occasion.

To my feeble intellect, that really appears to bang Banagher !

Referring now to the proceeding by way of "*Inscription en faux*," mentioned in the third line of the same page, which it is unnecessary for my present purpose to define, the lay reader will perhaps find it difficult to comprehend the grounds of Judge Badgely's judgment. "He relies," it seems, "that in the case of an attorney appearing for him- " self" and having occasion to "*Inscribe en faux*" a proceeding, the foundation of which is a "special procuration from the party" to his attorney "*there would be an absurdity in " taking such a special power of attorney from a man to " himself.*" So there would, may it please your honor, so there would if you went to a notary to prepare such a special procuration, when *you yourself* went to market to buy a leg of mutton. Should you send your servant or any messenger or other deputy to a grocer to buy a pound of tea or to tran-

sact any other business for you, it might be necessary to give that servant or messenger a written order or authority of some kind to enable him to prove that he was acting for you. —But should you go yourself to buy your leg of mutton or your tea, you might safely dispense with a procuration.— So any man in his own person acting for himself, although he be an advocate, requires no procuration. That's the fact; and though with characteristic politeness, the judge taxes me with propounding an absurdity, I shall not retaliate, for I'm not a judge. Accordingly I make no remark.

But such were the reasons which found favor with *Monsieur Le Juge* Berthelot.

The point of a comedy may be disclosed in a stage whisper, and knowing what sticklers some judges are for respectful, that is, servile behavior to the bench, I venture to make an enquiry, which the public must consider strictly private and confidential.

The rule is, that no man can confer, by procuration on another, any power that he himself does not possess. *E converso* it is an undeniable proposition that the possession of the power and the right to confer, by procuration on another, the power and right to perform any act, to transact any business, implies the possession in the principal of the power and the right to perform that act himself, to transact that business in person. In one word whosoever can act by deputy can act personally. Now, how comes it that those judges could ignore so self-evident a proposition? That's my question—put quite confidentially.

It may be said that the judges were not so ignorant as such a question would seem to imply. It may be added that, in their opinion, there were good grounds for the course which they pursued. This subject has, however, fortunately attracted the attention of the Judicial Committee, by whom those *grounds* are stigmatized as grounds of SUPPOSED expediency.

The Lords Justices express themselves as follows (see page 38): The Lords Justices " think that it was the duty of the " Judges (Aylwin, Badgely, and Berthelot) to administer the " law. The Lords Justices think that the Judges (Aylwin, " Badgely, and Berthelot) could not alter the law, and de- " cline to apply it on grounds of *supposed* expediency, as

" they appear to have done in the present case and *the pre-*
" *ceding* cases on which that judgment was founded."

This is a comprehensive rebuke, which applies to *all—all* the Judges who pronounced the decisions of which I complain. I shall wait a few days for an exposition of the grounds, if there be any, of the *supposed* expediency, the assumption of which has cost me more than fifteen years of my life and thousands of dollars.

But when the London solicitor procured the only authentic copy of the decision of the Privy Council, he transmitted it not to me but to Mr. Cassels, cashier of the Bank of Upper Canada as a kind of stake holder. This gentleman was strictly enjoined to retain that document until I should have paid the whole amount of the London solicitor's claim to Mr. Cassels. But the defeated respondent Brown could not be compelled to obey the judgment of the Privy Council until it was put upon the files of the Court of Queen's Bench in Quebec.

Drained by twelve years of expensive litigation, without either credit or money, I could not raise the necessary amount; but so long as the judgment remained in the hands of Mr. Cassels, it could be followed by no possible result.—It might as well never have been pronounced.

It happened, however, that the London solicitor had a son in the vicinity of Hamilton, in Upper Canada. Now being referred by the father to that son, and hoping to make some arrangement with him, I hurried up—not without expense—to meet him in Hamilton. That trip, that expense, however, were productive of no favorable result, and I returned to Quebec *re infe cta.*

The London solicitor in the mean time threatened to cause the judgment to be *returned to him in London!* He would in that case have been in a position to dictate to me, but I could not allow the prize for which I had so long contended, to be placed out of my reach.

I accordingly attached the document (that is to say, the judgment of the Privy Council) in the hands of Mr. Cassels. Some other incidents, which may without impropriety be omitted in this account, also occurred; but the London solicitor intervened in my suit against Mr. Cassels. It bears the number 1051. It was at length on the 7th of February, 1868, dismissed—not, however, without having subjected me to considerable labor, anxiety and expense.

Laymen will require to be informed that owing to that intervention, I stood as it were between two fires. As against Cassels I was a party to one suit, as against the London Solicitor I was a party to another suit, and had I failed, I should have had to pay two sets of costs!

Having, however, another string to my bow, and proving by affidavit that the judgment of the Privy Council was in the hands of Mr. Cassels, I moved the Court of Queen's Bench for a rule to compel Mr. Cassels to deliver the judgment. The order being made, Mr. Cassels obeyed it, but the London solicitor, through his agents here, having effected an arrangement with my adversary Brown, the latter playing into the hands of those agents, paid them for their principal, the London solicitor, the whole amount which the latter claimed. He thus, as he no doubt intended, secured the £67 sterling allowed for the performance of an act which it was not necessary for him to perform, and which he probably did not perform. Its performance devolved, in truth, on me. In his bill the charge appeared to have been made for reading eighty-four printed sheets, which he could only have been required to do had he prepared the CASE. But the CASE was got up in Canada, and by me. It was printed at my expense by M. Desbarats, and so prepared from data contained in the 84 printed sheets, but extracted from the manuscript before its delivery to the English printers.

The judgment being at length filed, a taxation of costs followed in the usual order. Plans illustrative of the position of the premises and of the pretentions of the respondent Gugy had been filed by me. Great expense and much time had been expended, and the skill of eminent upright surveyors had been taxed to convey to the Court all the information which it behoved the respondent to offer. All the three Courts had accepted the information and had considered the plans. The plaintiff and appellant Brown had not during the pendency of the suit in any of the Courts objected to the plans. On the contrary they were all referred to by both parties. Accordingly the Prothonotary allowed the defendant Gugy the exact amount which he had paid for the plans, less seven pounds.

The plaintiff Brown appealed from the taxation, and Judge Taschereau disallowed or retrenched twenty-one pounds more.

Without admitting that the reasons by which the Judge was moved were good reasons, I feel that the Judge considered that they were such. Nevertheless, had the unfortunate suit under review not been brought, I should not have lost £28.

That loss, then, was entailed upon me because I dared to believe that I might legally resist an aggressive proceeding calculated to wrest from me my property, which aggressive proceeding, as the result has shown, I was fully justified in resisting.

The consideration thus shown for the purse of the plaintiff Brown, at the expense of the defendant, must have sustained him under the mortification attending defeat, and not only emboldened him, but provided him with funds to renew the war, as in the sequel it will be found that he did.

As has been said, the decision of the Court of Queen's Bench in Canada was the act of a majority. The Court stood three to two. Had the Court been unanimous, it is understood that there would have been no appeal to the Privy Council. That appeal then may fairly be ascribed to the minority. But on the day of the decision, those judges simply signified their dissent.

Nevertheless, each of them long subsequently prepared what the Lords Justices describe as "*long and very elaborate arguments, supported by a citation of numerous authorities, against the decision of the majority of the Court.*" Of this proceeding, the Lords Justices speak as follows:—

"It was asserted by the respondent, without any contra-
"diction on the part of the appellant, that these arguments
"were not delivered by the dissenting Judges (Aylwin and
"Duval) at the hearing of the cause, but were first made
"known to the parties by being printed as part of the Record
"before us. If the statement thus made be accurate, we
"must say, with all respect for those learned persons, that
"the course so pursued by them *appears to us open to great*
"*objection.* We think that their reasons for dissenting from
"their colleagues should have been stated *publicly* at the
"hearing below, and *should not have been reserved to in-*
"*fluence the decision in the Court of Appeal.*"

Being a humble individual exposed to persecution, I should not have dared to whisper what the Lords Justices have pro-

claimed and printed. Read—learn—and ponder, ye people of the Province of Quebec: The Lords Justices charge the Judges Aylwin and Monsieur Jean François Duval, with having "RESERVED THEIR REASONS FOR DISSENTING IN ORDER TO INFLUENCE THE DECISION IN THE COURT OF APPEAL."

And how many more offences, ruinously affecting other suitors, widows and orphans—offences not so easy of detection—may they not have committed,—how many may they not yet commit? Those "long and very elaborate arguments" were certainly not printed until long after the date of the judgment which they were intended to support. Those of Judge Duval, were printed here in January 1862, by Mr. Cary, proprietor of the Quebec *Mercury*. They were so printed for my adversary who paid for the work.

Those of Judge Aylwin were, in like manner, as I have understood, delivered in Montreal to my adversary, who caused them to be printed.

I must do Judge Duval the justice to admit that his "long and very elaborate arguments," however trivial and inconclusive, have at least the merit of being as intelligible as any nursery rhyme. A severer censor would no doubt offer that effusion as a proof of the facility with which mere mediocrity, not to say absolute intellectual inferiority, can wriggle itself into high places.

To me, however, the production which the Lords Justices satirically named "arguments," appeared so funny, that I could not resist the temptation which it offered to excite the merriment of "the boys of the High School." The so called arguments were accordingly made the subject of a serio-comic letter dedicated to those boys—and reproducing that letter in the appendix, I dismiss the subject and the man.

Impelled by his peculiar idiosyncracy, and perhaps by another cause, Judge Aylwin indited, what he flattered himself was an exhaustive treatise on the subject, in 24 pages folio, equal, probably, to 120 of these pages.

Knowing the author I felt that I could safely dispense with the perusal of that treatise, nor in fact could I overcome the nausea which it excites. Justly stigmatized by the Lords Justices, it need be no further noticed.

RECAPITULATION.

The plaintiff Brown began by suing out action No. 533.

It was equal to two actions, for, after argument, the Court ordered a reference to experts. This step the Lords Justices stigmatise as "unnecessary, and to have led to no satisfac-" tory results, but rather interposed difficulties in the way of" the decision, and to have occasioned crimination and recri-" mination amongst persons acting as officers of the Court" little creditable to the administration of justice." In this cause Brown having failed, and twice appealed, three judgments were pronounced.

Eighty-nine witnesses were examined at great length, one examination extending over four days. It lasted upwards of twelve years.

To enforce the judgment to levy my disbursements I was involved in litigation, had to contest an opposition. I was denied fees, crossed the ocean six times, travelled up to London and back, as well as once [illegible]h Ireland without compensation, and £28 *of actual di[illegible]sements were taxed off!*

Then he brought a second action, No. 183.

In this cause the plaintiff Brown having failed and appealed two judgments were pronounced. Forty-seven witnesses were examined. It lasted eight years.

He brought a third action, No. 325.

In this cause the plaintiff Brown having failed and appealed, two judgments were pronounced. Thirty-six witnesses were examined. This suit also was referred to experts. It lasted eight years.

Thus the question relating to the real property was decided in my favor seven successive times, including the decision of the Privy Council. But in arguing the case No. 533, I used expressions at which one of the witnesses, Ferguson, took umbrage, and to obtain compensation he brought an action suit No. 873, for damages, 14th April, 1859. In the Superior Court he succeeded, but I appealed, and his judgment was reversed.

The cause, however, is still pending.

Then the London solicitor having intercepted the Queen's judgment and transmitted it to Mr. Cassels, the latter refused

to deliver it to me. Hence, in July, 1864, I sued for its recovery, No. 1051.

Inasmuch as the London solicitor intervened, this suit also should count for two. The intervention, it is true, was dismissed on the 7th of February instant, but the original action is still pending.

No. 581.—But on the 25th May, 1864, when the judgment of the Privy Council had barely been published in this country, the plaintiff Brown brought, as has been said, a fresh suit, exactly for the same pretended cause of action as the suits No. 533 and 183.

In the meantime, for obvious reasons, and from perfectly intelligible motives, my adversary Brown had bought up my debts' and on thus becoming my creditor, he had, in every case, sued instantly for the recovery of the claim. He so proceeded by suit No. 463, by suit No. 235, by suit No. 1543, by suit No. 789, by suit No. 1713, by suit No. 368, by suit No. 1414, by suit No. 361, by suit No. 1200, by suit No. 2156, by suit No. 367, by suit No. 907, by suit No. 356, by suit No. 1191, by suit No. 47, by suit No. 255, by suit No. 68, by suit No. 695, by suit No. 2603, by suit No. 193; making in all, errors and omissions excepted, in the Superior and Circuit Courts, twenty suits.................... 20

And the suits relating to the River Beauport, 533 and 325, counting for two each, six suits 6

Then Ferguson's case, as a direct consequence, one... 1

Then Cassels, two............................ 2

No. 53. But Mr. Wm. Bell had been one of my sureties in appeal and my adversary, has of course sued him. It was in fact a suit against me, and I have paid the amount £74 1

Making thirty suits................ 30

The plaintiff, as has been seen, failed in all the suits which related to the real estate, but as I was impoverished by the expenditure inseparable from the litigation in which he had involved me, he necessarily obtained judgments in all the others.

He has retained or employed against me in this country, sixteen lawyers, and in London, six solicitors and three Counsel, including an Attorney General.

He has sued out against me, fourteen executions. He has often seized, often advertised for sale, my goods and chattels, at the church door. The age of miracles is not passed; for I have still a few chairs and plates and cups and saucers.

I submit an account in detail of one series of executions:

They were all sued out in one single suit to recover the amount assigned to my adversary Brown by the late Mr. Campbell, which is herein above mentioned. The suit bore and bears the number 789:—

1859.

24th Feb.—A writ *fieri facias* issued.

26th Feb.—Seizure was made of 12 horses, 6 cows, and 2000 bundles of hay.

2nd June.—A *venditionis exponas* issued.

4th June.—A *saisie arrêt* issued in the hands of Mrs. Steele, my tenant.

23rd July.—A second *saisie arrêt* issued, in the hands of the City Bank of Montreal, and of one Francis McCulloch.

25th July.—A third *saisie arrêt*, in the hands of George Caron, Esquire, M. P.

27th July.—Another *fieri facias* issued; this time to seize hay *as it was making in my fields.*

1860.

31st Jan.—A fourth *saisie arrêt* issued (a second time) in the hands of Mrs. Steele.

1st March.—A fifth *saisie arrêt* issued, addressed to the Fire Assurance Company, for my stable had destroyed by fire a day or two previously.

17th Oct.—Another *fieri facias* issued.

Lastly, another *saisie arrêt* issued, addressed to one John Donoghue.

This makes, in that one case, eleven writs of execution; and while he insisted on being paid, my adversary carefully closed the channels through which he expected that funds would flow into my treasury.

I had contested because twice over the Plaintiff Brown, had seized for a larger sum than he could justly claim. In support of my pretensions I had been compelled to resort to the testimony of the Plaintiff himself. Now he appeared, it is true, and testified, but he insisted on being taxed, and on one

occasion he was allowed, for attendance as a witness, nine shillings and three pence half penny. He thereupon unnecessarily took out a certificate of taxation at a cost of one shilling and six pence, and compelled me to pay the whole. But on another occasion he contrived, in the same cause to be taxed forty-five shillings for attending as a witness. He again, unnecessarily took out a certificate at an expense of one shilling and six pence, and again he made me pay him the whole amount, " say forty-six shillings and six pence. And this occurred in the above mentioned cause No. 789 in which *alone* he, Brown, thus oppressively sued out against me eleven executions, and compelled me to resort for redress, to Her Majesty The Queen in Her Privy Council.

Any civil man, free from the stench of spirits, and the stink of tobacco may upon application to me examine the proof of the foregoing statements.

As the result has proved, my adversary had sued out the executions above enumerated, for a *greater* amount than he was entitled to claim. On my opposition, a judgment to that effect was pronounced. An appeal followed, which ended in the favorable decision by Her Majesty the Queen in Her Privy Council herein above mentioned.

Here follows a list of the cases in appeal between my adversary and me :—

No. 81. Brown *vs.* Gugy, confirmed and again confirmed in the Privy Council.

No. 82. Brown *vs.* Gugy, confirmed.

No. 12. Brown *vs.* Gugy, confirmed.

No. 89. Brown *vs.* Gugy, reversed. This was again reversed in the Privy Council.

No. 28. Brown *vs.* Gugy, confirmed.

No. 16. Gugy *vs.* Brown, reversed.

No. 94. Gugy *vs.* Brown, confirmed.

No. 46. Gugy *vs.* Brown, confirmed.

No. 49. Gugy *vs.* Brown, confirmed.

No. 75. Gugy *vs.* Brown, confirmed.

No. 41. Brown *vs.* Gugy, reversed.

As Gugy, appellant, and Ferguson, respondent, in which I succeeded, may be fairly added to the number, I have thus been engaged in twelve appeals.

Three of the appeals herein above mentioned arose out of a single cause.

Exhausted by a series of persecutions under color of law, evidently intended to bring about my ruin (by action No. 691). I sued my enemy in damages—for fifteen years of persecution. I claimed £30,000. The progress of this suit brought in 1864, is as follows :

1. The defendant Brown demurred, and by judgment on that demurrer my action was dismissed with costs.

2. I appealed and that judgment was reversed.

3. The record being returned to the Superior Court I claimed a trial by jury which was denied.

4. I appealed again and this time the judgment was so worded as to indicate that I was entitled to a jury trial—but I was condemned to pay all the costs.

5. The Record being a second time returned to the Superior Court, the trial by jury, which I had claimed, was in consequence of the last mentioned judgment, allowed. Then on my application it was ordered that the jurors to be summoned should be composed of men who spoke or at least understood English.

6. But that sort of jury not suiting my adversary *he* prayed that six of the jurors should be French Canadians. He therefore now appealed and the judgment being reversed I was again condemned to pay all the costs. See Appendix B.

7. I then moved for leave to appeal to Her Majesty in Her Privy Council. On this occasion the Court of Appeals being divided, two for me and three against me, I failed—being again condemned to pay costs.*

All these attempts on my part then to obtain redress—were followed by no other result than so many condemnations to pay costs.

The costs must be paid but the most unobservant and stolid of men must perceive that the judges composing the Courts who differ in opinion so widely cannot be all right; and while many of them must necessarily be quite wrong, they may all be and doubtless are more or less wrong.

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* My adversary Brown, however who is a defendant in this case has on the second of March been allowed to file what is called a plea "puis derrein continuance"—this plea being pending I can now make no further remark relative to it.

The average of costs in appeal is about $140 on each side. Hence, to fail in appeal generally entails a loss of about $240. It must, however, be remembered that in the cases in which I was denied fees, I could claim only my disbursements (about $20) ; but when I failed, I was always compelled to pay the whole sum. The pecuniary amount alone involved in these cases is thus certainly not less than $2,880.

My eight sea voyages—with the incidental land travelling—and other unavoidable expences can't be estimated at less then $1,200 ; irrespective of loss of time.

Having neither data nor time for calculation, I cannot specify the exact amount involved in litigation in the other cases: but I suppose that it must exceed the aggregate of the above mentioned sums.

Cases originating in the same motive could no doubt be cited. Naboth's vineyard is one on which I have meditated for years. In this memorable record of a covetous disposition, it is in Holy writ related that the King Ahab was willing to pay for the land. Now, my adversary was determined to wrest my property from me on unfounded pretexts, by sheer dint of money and of the abuse of the law, not only without offering me any compensation, but by effecting my ruin! "Man's inhumanity to man" often exhibits itself in that manner ; but as far as I am informed, an enumeration of such a multitude of suits is not to be found in any book , and the conduct of the Judges in the encouragement given to persecution, is quite unprecedented. The writer who recounts the fate of Jezebel was certainly inspired, and our Judges as certainly are not ; but as mere men of average capacity, they might, from the facts with which they had to deal, have arrived at the conclusion which the inspired writer assumed from a single instance. Had the Judges in question but entertained some respect for their order, they would have felt that their evident leaning against me must have entered into the calculations of my adversary, as a considerable item—a fact most discreditable to the Judiciary!

The last document published in this " strange, eventful history" of a freeman complaining of persecution, is a petition to the Court of Queen's Bench. I offer for the perusal of the public, an exact copy of that petition.

Those suits have cost me upwards of fifteen years of my

life; nor (my attention being unavoidably absorbed in the performance of the task, and the duty of self-defence) have I been able to devote myself to any profitable labor.

Hence, I have been subjected to most painful privations of all kinds.

Then, by the act of an incendiary, my stables and barns were consumed by fire, and I lost, in a few hours, certainly not less than eleven thousand dollars, how much more I shall not venture to affirm. I say LOST, for, owing to the treatment of which I complain, on the part of the Judges, I had not the means to pay for insuring.

This fire, and the charge which I preferred on oath, necessarily made some noise, and my misfortune, being much talked of, could not but become, and was, doubtless, known to the Judges.

The late Judge Panet had once, it was said, refunded a sum of money of which a litigant had, by an erroneous judgment pronounced by him, been deprived. I thereupon resolved to afford the Judges of whom I complain an opportunity to behave as conscientiously as Judge Panet is said to have done.

I therefore read in open Court, and presented from my place at the Bar, the underwritten petition. It was "fyled on the 14th March, 1867," and is so endorsed.

QUEEN'S BENCH.

LOWER CANADA.

No. 81, Brown, Appellant, and Gugy, Respondent; Judgment dated 7th May, 1860.
No. 89, Brown, Appellant, and Gugy, Respondent; Judgment dated 19th December, 1862.
No. 85, Gugy, Appellant, *vs.* Fergusson, Respondent; Judgment dated 7th May, 1861.

TO THE HONORABLE THE JUSTICES OF THE COURT OF QUEEN'S BENCH:

The Petition of Bartholomew Conrad Augustus Gugy; an Attorney of this Court,

RESPECTFULLY SHEWETH,—

That in three cases mentioned in the margin, your Petitioner was denied fees by the judgment of the majority of this Court;

That in each and all of these cases, your Petitioner was engaged in resisting agression, was both defendant and respondent in two cases, and defendant and appellant in the

third, and in so exercising the right of self-defence, was ultimately successful in all three;

That your Petitioner brought the last of the Judgments, pronounced on the 19th of December, 1862, by appeal, before Her Majesty in Her Privy Council, and that the right of your Petitioner to fees was maintained;

That your Petitioner submits herewith, a printed copy of the reasoning of the Lords Justices, for the information of this Court;

That your Petitioner, by the series of Judgments of which he complains, suffered ruinous loss; and that, under the circumstances, he has ventured to appeal to the magnanimity of the Judges of this Conrt who concurred therein, to repair the evils which *they have caused*, and he has suffered.

Quebec, 14th March, 1867.

A. GUGY.

On the ensuing day, the fifteenth, the Petition was "ordered to be taken off the files," and is so endorsed.

The officer of the Court, being so ordered, simply "*in consequence returned my said petition to me in open Court,*" and the original now in my possession, is so endorsed.

Thus vanished all hope of redress.

Moved by a sense of duty a government equally enlightened and paternal would of course make, as it is called, ample provision for the worthies who figure in these pages—irrespective of the public interest.

That is intelligible and it follows that in my own country I should be excluded from every career—but being in earnest I complain that men who prate of British connexion, of the English constitution and of English principles should have deemed it rigorously proper and just to contenance I shall not say connive at the oppression of one who has done more to maintain British connexion than all the members of each successive ministry by which the Judges of whom I complain were appointed.

Great men generally bear the misfortunes and sorrows of their inferiors—all the misfortunes and sorrows, indeed, to which they are not themselves exposed—with great stoicism.

And so Monsieur Jean Francois, who had then become Chief Justice Duval, summarily disposed of my petition. Notwithstanding the part that he had taken in inflicting the wrongs which I suffered, he so disposed of it, without a syllable of commiseration or regret. He so disposed of it, indeed, without another word, by despotically interdicting the right to petition recognised by the constitution, and knowing that, so long as the petition remained, "on the files" it could be referred to, he incidentally contrived to consign it to oblivion. The subject appeared to him, indeed, to be so devoid of interest that, at the moment, he devoted himself exclusively to the removal from his nostrils of a mass of obstinate mucus. In his apprehension the nasal obstruction was clearly more important than my long martyrdom; and he evidently did not calculate on the audacity or infatuation of the present publication.

But as the barefooted Friars chaunting vespers in the Colisœum suggested to Gibbon his immortal work, so, comparing small things to great, this communication or appeal originated in the sight of Madame Duval, luxuriously reclining in her carriage, drawn by two horses richly caparisoned, driven by a coachman wearing white gloves!

As I gazed, a delicious fragrance encompassed me, and a slight flutter, as of the wings of a seraph, was faintly audible. "Be of good courage," whispered my guardian angel, "you have waited long, but the white gloves are typical of those clean hands with which all men, and more especially judges, are expected to come into Court. As under the well-known, the peculiar, the deplorable circumstances Monsieur Le Juge en Chef chooses for such a purpose to display his enormous wealth and corresponding luxury, he can well afford to make good the losses which you justly ascribe to him."

It was no hallucination, for a lambent flame played about the wheels, sparks flashed from the horses hoofs, light issued from their nostrils, and the ornaments on the harness rose upon their backs into brilliant coruscations. Then appeared, in bold relief, the memorable words, "*aide toi le ciel t'aidera*," embossed upon the panels of the carriage in letters of fire, bright as the lady's eyes.....................

....Having by a not unnatural process of inversion arrived at the cause and time of the

..ception of this production, reserving the right to recur to the subject, I shall hurry on to the end.

Every movable in my possession being under seizure, may be shortly sacrificed. But so far as I can form an opinion no Judge has ever seemed to perceive or understand that my adversary's object has been from the first to bring my property to Sheriff's sale, then to buy it at a low figure, as has been often done, in Kelly's case among others. Many will perhaps wonder that I should have hitherto had the good fortune to prevent it. Now without venturing from the preceding pages to deduce a moral, I offer the facts as a proof of the connivance of a part of the Bench at the abuse of the law, and every suitor is exposed to the same fate.

I esteem it, too, to be not merely a mistake but a neglect of duty on the part of individual Judges to omit, as they do habitually omit, to enforce the duty, the propriety and beauty of veracity. The best, the very best, of them can only arrive at just decisions by means of true testimony, and unless they will, when they meet false evidence, expose the perjurer, they, in effect, encourage falsehood. In the cases herein above mentioned, many occasions have occurred upon which (with deference) I maintain that a true Judge was bound to have expressed his indignation. I have cit[illegible] the case of my adversary's admission—that he had built the wharf—which is the origin of all this litigation—in 1850. He was unexpectedly compelled to make that admission. He knew that at least sixteen w[illegible]nesses, myself included, could, if necessary, have testified to the fact. He, nevertheless, brought up poor ignorant men to sw[illegible]ar that the wharf so built by him in 1850 was a very old wharf.

The Judge who decided the cause, found by his judgment that he *did not believe* that the wharf was an old wharf; yet he did not even allude to the subject.

Then in the cause under the No. 183 my adversary the Plaintiff Brown endeavored to prove that he had suffered great damage from the stoppage of his mill. He brought up witnesses to prove that at a particular period the mill was stopped, as a result of the rising of the tide owing to the building of my wharf. It was, of course, in the first place, clearly established by educated, scientific, practical men, engineers and others, having local as well as general ex-

perience, that the level of the tide in the river Beauport is not affected by my wharf, but governed by the *level of the tide in the St. Lawrence.*

I was enabled to go much further, some of the witnesses condescending to particulars, affirmed that at that particular period my adversary had in his mill a large quantity of wheat belonging to a Quebec merchant, which he had contracted to grind for the merchant. It was pretended that by stopping my adversary's mill, as aforesaid, I had prevented him from grinding that particular wheat, thus doing him great damage. But I ascertained that the merchant was Mr. Michael Connolly, who has, in the interest of truth and justice, permitted this use of his name. Examined as a witness, he testified as follows: "In the summer of the year 1854, I sent to the "Plaintiff's (Brown's) mill, at Beauport, to be ground, some "six thousand bushels of wheat, or it may be more. The "plaintiff contracted to grind that wheat into flour, and deli-"ver a certain amount of flour in barrels weekly. He did "not do so, but on the contrary, delivered a very small part "of what he had promised. I complained, and frequently "went there myself personally. The reason that the plain-"tiff assigned for not grinding the wheat according to con-"tract, was, that the *water was lower than he expected it* "*would be* at the time at which he made his contract. The "*only* explanation that the plaintiff gave, was, that the *wea-*"*ther had been dry*, and *that a sufficient quantity of rain* "*had not fallen to enable him* to fulfill his contract. I be-"lieve that he disappointed us in grinding our wheat *in part* "*by grinding for himself*, but in greater part *for the want of* "*water*, and I *happen to know that both the mills on the same* "*stream*, I mean *Henderson's as well as the plaintiff's, were* "*partially in want of water.*"

The Judge to whom the evidence was submitted, did not believe the witness whose testimony was contradicted by Mr. Connolly; but he gave no sign.

And yet were Judges from the bench audibly to name the witnesses who give, evidently, false, or at least, incredible testimony, the number of witnesses, the expense and duration of enquetes, would be much diminished. Falsehood and perjury would be brought into discredit, and the cause of truth, honor, and justice would be proportionally subserved.

I must not be understood to recommend any hasty remark. Until the hour of judgment, all comment upon the testimony would be premature,, but when a Judge pronounces a judgment in a suit, both sides of which are supported by testimony, by testimony which conflicts, which clashes, he may be presumed to have determined the question of credibility. Should he, in such a case, have met with evidence of a reprehensible description, and Judges, no doubt, often do, it seems to me that he should take some notice of it.

I cannot resist the temptation to cite another instance of a pregnant fact. My adversary found some six witnesses ready to swear that previous to the building of my wharf, there were two channels to the river Beauport. Of course, these witnesses were prepared (I need not describe the process) to swear to the exact course and direction of the channel, which it was alleged that I had interrupted. On the cross-examination, however, putting a pen into the hands of each witness in his turn, I requested him to draw upon the plan the exact line of the second channel. Some six witnesses attempted to describe the exact line, but as no two of them agreed, the plan is covered with lines describing many rivers. However, there were, and are to this hour, on the spot, mute witnesses incapable of falsehood. They are trees, fifty or a hundred years old, a clump of trees all within two or three feet of each other, whose roots are visibly interlaced. These trees conclusively establish that no river could, by any possibility, have passed through that spot. But it is precisely at that very spot, through that very clump of trees, that all the witnesses drew the exact lines of their pretended channels. There was an attempt, by parole testimony, to contradict the immutable laws of nature, but no Judge ever made any remark upon the subject. Yet, to discountenance such attempts to impose upon the court, seems to me to be within the Province, and to fall within the appropriate duties of a true Judge. An example of the expression of judicial indignation, is to be found in a late report of an English cause to which a blackguard lord was a party. Such of our Judges as feel that they are moved by a sense of honor, might imitate that example with advantage.

Any atttempt,any kind of attempt to impose upon the Court by false evidence is an insult to the Judge, as well as an offence against God and society. In support of my view my

experience enables me to give another example. An Englishman arrived in Canada for the first time in 1854, and entering my adversary's service reached Beauport in December of that year. He could not possibly have seen the banks of the Beauport free from snow, or the water free from ice until the month of May 1855. Yet he ventured to swear (I give his very words) as follows:—

I am an Englishman. I left England in the summer of the year 1854. It was on the first of December 1854 that I reached Beauport. There is a wharf that is built *across* the river—at the end of the tail race—I mean the wharf on the defendant's side of the river marked " wharf built in 1852."

If the *course of the river were not stopped* by that wharf no harm would be done—not in the least. I mean to say that the water would but for that wharf flow down in its *natural channel. I am quite positive of that. I am quite certain of it. It is a fact for which I pledge myself.* I did not see the wharf built. Of course I never saw the river flowing in that channel. Of course *I could not see it* when it when it was shut off by the wharf. *I have marked* upon Ware's plan in the presences of the experts the line of that *natural* channel of the *existence of which I speak as a fact*, commencing at the point F as marked by me and ending at the letter G which I have also marked.*

Now the wharf of which he so spoke had then been built and finished full two years and nine months. It was in supporting by argument my defence in this cause that I was betrayed into an energetic expression upon which a law suit was fastened on me and I was condemned to pay damages to the tune of $100 with costs amounting to as much more—That expression has already cost me at least four hundred dollars—but as the action of damages is still pending I refrain from adverting to it. As, however, I may speak of the principal case in which the evidence was given, I must add that the Judge did not believe the evidence which I unhappily so attempted to characterise. He did not believe it, else he must have decided against me. He did not believe it—nevertheless he passed it over in silence. What is more—that very

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*** It will surely be generally admitted that to defend oneself when pertinaciously, perseveringly attacked by an implacable rich enemy who can at pleasure procure such witnesses can be no common task.**

Judge condemned me to pay damages upon the evidence of my adversary—who had reported my words, and who as a witness for his servant testified against me. It was in my apprehension, I respectfully submit, a mistake on the part of the Judge—a mistake which has cost me dear, but only a mistake—and not such a mistake as to diminish my regard for him.

I am, however, convinced that it was his duty to have commented upon the testimony which I had the misfortune to characterise; and had he done so, I should not have been sued.

Another salutary result would follow, the Bar at least would be made to feel that the Judges read the evidence, and read it in a discriminating spirit. In the order of time and logic that is the first as well as the most important of Judicial functions, for all law is ancillary to fact.

The Judges too, it seems to me, should give an example of obedience to the law; they should assign, intelligibly assign, the real grounds of their decision.

The sovereign can do no wrong, but the duties of protection and allegiance are corelative and the sovereign who is the fountain of justice, should never be represented by low caste pot house politicians.

From the facts thus disclosed from what he knew of the law, my adversary reasonably believing that he could wear me out, vowed that he would do so. Yet in his estimation the land which he thus determined, and has during so many years by the abuse of the law attempted to wrest from me, is not worth more than twenty-five cents. He has said so and I have it it in my power to prove the fact by [illegible] first class unimpeachable witnesses.

Had he civilly requested a gift of the land I might have complied; but he preferred to worry me, to harass me, and his first step was a suit at law.

Should there be any man disposed to maintain that I ought to have yielded to compulsion, I would enquire whether I could be sure that it would end there.

Increase of appetite may grow with what it feeds upon, and if my adversary could by force have got a bit of my farm he might soon have claimed the whole, and eventually have expelled me. Had I given an inch he would have taken all.

That is the cause of my resistance. A. GUGY.

APPENDIX A.

As this publication will most assuredly tempt power to use the lash, I shall make a clean breast of it. It will cost no more.

The Judges are great sticklers for respect, and, truth to say, respect often takes the form of adulation and servility. Our Courts ring with the perpetual iteration and reiteration of the words "Your Honor," so dear to judicial ears. Yes, your Honor, No, your Honor, Of course, your Honor, Just so, your Honor, Surely, your Honor, Doubtless, your Honor, and to on, to an extent absolutely nauseating. Then, visible efforts are made to "laugh with counterfeited glee" at she most threadbare antediluvian Joe-Millerisms!

Invariably and unaffectedly respectful when it is possible to feel respect,I go through the motions on all occasions with great care. It is, nevertheless, perfectly clear that the Courts are unfavorable to me, or are, at least, tired of me and of my cases. Monsieur Le Juge en Chef, Jean Francois Duval, has dared to describe my wharf, built in self-defence on my own property, as "an open violation of the laws of the land and of neighbors' rights." He also had the assurance to stigmatise my defence of myself in person as "zeal carried to excess." His temper and his manners, like his appearance, it will be said, are peculiar. So they are; but other Judges, men whom I feel inclined to respect, and whom I should beg to allow me to respect them, appear to blame me for being dragged into Court, and for resisting my enemy's attempts to ruin me. Possibly, devoured by care, and suffering under a perfect avalanche of actions, appeals and executions, I may have occasionally appeared to be more in earnest than was quite agreeable to men who, having nothing to complain of are not prepared for the contortions of a man in agony. I have no doubt failed to emulate the captive warrior tortured at the stake. The Judges might, however, consider that replying to an intentionally gross insult, a friendly tomahawk sunk deep into the martyr's head, soon ends at once his life and his sufferings. But, as my sufferings have endured for nearly a quarter of an average life, and as it is evidently intended that those sufferings should continue, were it not that, by God's blessing, I have always been abstemious, I must have

been driven to madness. Indeed, indeed, had my adversary, instead of suing, shot me through the heart in 1852, he really would have behaved with great comparative humanity. Yet, it would appear that I am thought to deserve punishment for defending myself. So the poor child of a vicious mother, instead of being soothed for deploring its fate in tears, is often (as I have noticed) cruelly beaten, "*to give it* (as the phrase is) *something to cry for*."

Hence, expecting to get plenty to cry for, I shall proceed. Judicial arrogance can only be restrained by professional men of character, of ability, and firmness. In the absence of such professional men, Judges would, by an easy transition, become tyrants. The degradation of the barrister tends to the corruption of the bench. As it is inflated by a sense of irresponsible power, the Judge, accustomed to submission, will occasionally be tempted to sacrifice to his self-love the fortunes of suitors and the hopes of families. From the wrongs inflicted on me, some conception may be formed of the evils to which laymen are exposed. Then the common herd of mankind generally side with power. They generally overlook this simple fact, that it is the lawyer who is, under the constitution, the expositor and protector of the rights and liberties of his fellow-men. I have known respectable individuals, not devoid of education and experience, exult in what they triumphantly described as the glorious snubbing given by Judge A. to Lawyer B. Now, in their own cases, each of those individuals would have been loud in the praise of counsel who had exhibited manhood and independence in endeavoring to correct the hasty, erroneous views of a Judge, or to recall him to a sense of duty. Such efforts are often necessitated by the assertion of crude notions. Then, since Monsieur Le Juge en Chef, Jean Francois Duval, a low-bred man, has introduced the fashion of interrupting counsel, of snappishly taking the case out of their hands, and of affecting to listen with an air of undisguised contempt many barristers, who appreciate the dignity of their calling, have, to my knowledge, been much disturbed. Some have been incapacitated from the performance of their duties, and one, who would have been perfectly justified in flying at his tormentor and tearing him to pieces, in my presence burst meekly into a flood of tears. It is as the sworn, the life-

long enemy of terrorism, not as the panegyrist of the bar, that I indite these lines. I know my brethren, and am not blind to the worth of many among them; but I notice with dismay the indifference with which the best among them regard the pretensions of the bench. In the interest of the community, the Judiciary should not engross, as it threatens to do, all the moral power which the profession must always possess. The odds are in favor of the Judge whose position is fixed and permanent, whose salary is large, whose power is great.

But, though every man can choose his lawyer as he may choose his baker or his butcher, he can't choose his Judge. It is upon compulsion that the citizen addresses himself to a particular Judge, theoretically selected, it is true, on the sole ground of fitness, but practically appointed—in most cases appointed upon grounds altogether irrespective of his worth. The only check upon such functionaries is the able, independent lawyer, precisely the class which is likely to be most unpopular with the Court. Such lawyers are, however, indispensable, for the possession of irresponsible power has a tendency to culminate in tyranny; and in resisting tyranny, revolution, if not absolutely justifiable, may at any time supervene.

Prepared for most contingencies, I anticipate comments, by no means flattering. It will, no doubt, be thought and said that I am no better than my neighbors. Granted; but Luther could not have become a reformer had he not been a monk.

Written on the evening of Wednesday, 4th March, 1868.

APPENDIX B.

Here an explanatory note seems to be needed. It is natural that persons of the same class, speaking the same language, when engaged in a law-suit to be tried by jury, should wish the jurors to be all of their class. Thus, as a general rule, men whose mother-tongue is English would be presumed to be desirous that "the jury should be composed exclusively of persons speaking the English language. But the present Honorable Judge Badgely, when Attorney-General, introduced and carried a measure which has been incorporated

in the Consol Statutes, chapter 84, page 780. This is the "act respecting the selecting and summoning of jurors." It is the 41st section of this Act (page 792) which has paralyzed the whole system, or at least surrounded it with insurmountable difficulties. It was thereby in effect enacted that no proposal made by either party to have an English jury could be sanctioned by the Court unless the other party consented! This was a very popular measure with the French Canadian leaders, for the opposition of either of the English suitors enabled six French Canadians to take part in the determination of the controversy, and to decide upon the fate of the parties. One of their leaders, the late Mr. Viger, had often tried it. But, as he failed, an Anglo-Canadian contrived to carry the point; and verily he has had his reward. It followed that any Englishman who had no particular confidence in the justice of his cause, could always, by putting down the brakes, stop the whole machinery, or at least so encumber and lengthen the proceedings, by means of translations, as to multiply the proverbial uncertainties and delays incident to litigation. Before I had moved for an English jury, my adversary, Brown, gave me notice of his intention to apply for such a jury. But he was *not sincere*, for on my acting on that hint, and moving for a jury to be composed of persons speaking the English tongue, he, citing the above-mentioned statute, successfully opposed me.

In the meantime, however, the Act 27 and 28 Vic., cap. 41, "respecting Jurors and Juries," was passed. By the 8th sub-section of the 9th section of this last statute (page 259), so much of the statute herein first cited, as enabled either of two English suitors to defeat the claim of the others to obtain an English jury, was repealed. It was on this ground that Mr. Justice Taschereau granted my application. But my adversary, a copy of *whose notice of his intention to make the very same application for a jury entirely composed of Englishmen, was on the files, and was actually exhibited* to the Court of Appeal, succeeded. Wherefore, I was again condemned to pay costs.

APPENDIX C.

A LETTER TO JUDGE DUVAL ON HIS OPINION, AS PRINTED BY G. T. CARY, FOR WILLIAM BROWN, PLAINTIFF, IN A CAUSE AGAINST BARTHOLOMEW CONRAD AUGUSTUS GUGY, BY THE DEFENDANT.

Dedicated to the Boys of the High School.

TO THE HONORABLE MR. JUSTICE DUVAL.

SIR,—It is now upwards of nine years since William Brown, of Beauport, miller, brought against me an action, in which he claimed to have suffered at my hands damages to the tune of £300. Having failed in that action he appealed to the Court of Queen's Bench, of which you are a member, and by its decision the judgment in my favor was confirmed. The Chief Justice, with Judges Meredith and Mondelet, concurred in the confirmation, but Mr. Justice Aylwin and yourself were, as usual, unfavorable to me.

Emboldened by the dissent of two judges, my adversary has appealed to the Queen in Council; a vexatious, if not an absolutely ruinons result, which could not have followed a unanimous judgment. Your opinion, then, is not a matter of indifference to me, nor, indeed, to any suitor. On the contrary, my interest in it may be estimated, in this case, at £1000, an amount which it will probably cost me to repair to England to sustain the judgment of the majority of the Court. I propose, therefore, to exercise my undoubted right to dissect your printed opinion, nor shall I hesitate to remonstrate, after the manner of the frogs in the fable, against a proceeding which, however pleasant to you, is or may be death to me.

On the occasion upon which the judgment was pronounced, you made only one remark, that I can remember. You referred to a period at which you and I were students in the office of Mr. Vallières. You said that he had been denied his costs in a suit which, being plaintiff, he had conducted in person. I care not about the accuracy of the statement, nor is it, in my apprehension, of the least moment whether it be

or be not true that he was so unjustly dealt with about forty years ago. Mr. Justice Aylwin, always full of "wise saws and modern instances," always ready with a dictum to support an act, was pleased, in one of my cases, to declare that an "adverse practice of seven years was sufficient to defeat the express terms of an act of Parliament." It seems to me, *a fortiori*, that a *judge-made* practice, not only founded on no law, but contrary to law, can be abolished by an uninterrupted series of adverse decisions pronounced by the highest judicial authority and a full Bench, without a dissentient voice, during a period of three times seven years! Now this, *inter alia*, is a fact of which you ought to be informed, more especially as you yourself so decided, at least in one cause, that of Cannon *vs.* Henley.

The sole remark which you thus made related to the costs, and my comments, published in the *Mercury*, were necessarily confined to that subject. In the presence, however, of the judicial committee of the Privy Council, *sic volo, sic jubeo*, would be indecorous, and although you evinced no regard for the suitor with whose rights you dealt, you have since composed and permitted the plaintiff to print an elaborate opinion. Able, educated, ingenious, and fluent Mr. Justice Aylwin thought that he could afford to admit his inability to pronounce an oral judgment. You may have been restrained by other considerations, but how deplorable the condition of a country in which two judges of the Supreme Court are incompetent to assign orally the reasons of their decisions.

Mr. Justice Aylwin caused his opinion to be printed, at his own expense, and from whatever motive he sent me a copy. He thus disarmed criticism, but having, like Gilpin's wife, a frugal mind, you pursued a different course, and I obtained a printed copy of your work by mere accident. You will find it reproduced in one kind of type; the commentary appears in another, and they are meant to be read together. For obvious reasons I have added a number to each paragraph.

1. Paragraph. "The Appellant, Brown, instituted this action to compel the Respondent to demolish and remove a wharf erected "by the latter in the River Beauport, causing Brown very great damage, as he explains in his declaration, filed in the Superior Court."

The site of my wharf was the principal question. I main-

tained* that it was erected on a *bank* part of my own pro perty. I alleged that it was intended to protect that bank from the injurious effects of the current of the water impelled against my land by a wharf built two years previously by my adversary.

Such was the main question, the damage could only be a consequence of the act. If the act was illegal, if I built a wharf *in* the river, damage might ensue. Now this is the state of the issue, a principal question and consequential question, and you decide both in the outset. You affirm that my wharf is built *in* the river, and that it causes Brown *very great* damage. These superlatives are yours, not Brown's. The able Attorney, who framed the delaration, judiciously refrained from the use of terms so extravagant. Had they appeared towards the conclusion, had they followed the narrative and an intelligent statement of fact, they might have been overlooked or condemned, at most, as at variance with good taste. But if I understand English, your conviction is the result of the *explanations* contained in the declaration. You say, *as he explains in his declaration*, words which remind one of the letters Q. E. D. at the end of every problem in Euclid. As a judge, you are presumed to know something of the language in which you write. Had you said " as he complains," " as he alleges," you would have been understood to mean that the statement was Brown's statement. But to explain is " to make plain, manifest or intelligible, to clear from obscurity, to expound." Your use of the term *explains*, then, implies the existence of a fact made manifest (not by the proof at which you have not arrived, but) by the declaration! It is as if you had said, Brown has *demonstrated by his declaration*, and you seem to assume that he is right without any enquiry. Thus the statement touching the site of my wharf, and the effect of its erection, is made, in your opinion, to rest, not on the authosity of Brown, but on your authority. This will doubtless have struck every lawyer who read your opinion ; but most laymen, judging by your language, would have formed a very erroneous estimate of the effect of the *explanations contained in a declaration*. It is a compendious method of arriving

* I did more than *explain*, for I proved.

at a conclusion, which may account for many painful events, for the avowal of which, however, I was not prepared. Allow me to refer you to the maxim *secundum allegata et probata*, and to enquire whether the necessity for proof has been dispensed with by any recent statute? Poets habitually commence *in medias res*, but you have begun with the end.

2. "This action, well known in our law by the name of *dénonciation de* "*nouvel œuvre* is taken from the Roman Law. The principles on which "it is founded, and the rules by which Courts of Justice are to be guided "in adjudicating on the cases submitted to them, are clearly laid down "by the several jurists who have written on the subject."

3 "It is unnecessary for me here to state the facts of this case, which "are set forth in the factums of the parties and in the opinions of some "of the Judges; suffice it to say, that this Court is called upon to decide "a question of law and a question of fact."

Passing over the second paragraph, I shall devote a few moments to the third.

Were you disposed to disseminate any part of the particular kind of knowledge which you possess, you might enlighten the age by a specification of the causes in which "questions of law or questions of fact" are not involved. You say that it is "unnecessary for you to state the facts" (and judging from the context) because "they are set forth in the factums of the parties and in the opinions of some of the judges." You clearly mean, at least, that those who may be desirous of information upon the question of fact can and will obtain it in the quarter indicated. Now this would be quite satisfactory if the statements contained in the *Factums* were identical or similar. But they conflict, and one is at a loss to know which you hold to be true, which false. Where is a candid man to look for the truth? If you admit that some respect is still due to it you must acknowledge that you might, with advantage, have referred to the sources at which correct information could have been obtained.

But you couple "the opinions of some of the judges" with the statements contained in the factums! Which statements and which judges? Do you mean Judge Aylwin, who assesses what you call *very great* damage at one shilling? What is the public to understand you to mean? SOME is a term signifying a number greater or less, but indeterminate. Supposing *some* to apply to the majority of the Court, we have three judges making statements the very reverse of those, on

which founded "on the explanations contained in the declaration" your convictions would seem to rest. They all three maintain that my wharf was not built in the river, and that it *caused* Brown no damage whatever. You surely can't mean that those judges make correct statements! Acknowledging that you have puzzled me (not for the first time) I submit that if you should have intended to say that judging by their factums, the parties and the judges all agreed as to the facts of the case, then there can be in this case no question of fact. But you assert that there *is* a question of fact as well as a question of law! This passes my comprehension; but that may be my fault or my misfortune.

Clearly, *some* must be understood as contra-distinguished from *all*. You yourself are not one of the *some*, nor can *some* stand for Judge Aylwin, or for any of the others. Then all the others are apparently not agreed. *Some*, to use your very words, in their opinions set forth statements of fact. If some only make these statements, it follows that the others do not. Either you mean that the others do not in their opinions set forth any statement of fact whatever, or that the statements which they do set forth are not the statements on which you rely, and to which the parties interested are to refer for information. Here I am driven to conclude that you mean that there is a difference between the statements set forth by *some* of the judges, and the statements set forth by others of the judges. But this is a case of obfuscation, and I can grope no farther.

4. "As to the question of Law, that is, Brown's right of action against "the Respondent, assuming the facts he alleges to be true, the right "appears to be beyond fair controversy, even admitting that the Apel- "lant had sustained no pecuniary loss when he instituted his action."

5. "Troplong, who has written most ably on the subject, in his Traité "de la Prescription, vol. 1, No. 313, says: 'Ce n'est pas contre un dom- "mage *causé* qu'on voulait se prevenir mais contre un danger ou un tort "à venir.' The same doctrine will be found in the 7th volume of Merlin's "Repertoire de Jurisprudence, page 395, and the following—Daviel des "Cours d'eau, vol. 1, No. 471, et sec. To this may be added the opinions "of Garnier, Grenier, and Proudhon."

Troplong, could he hear of it, would doubtless estimate at its just value the certificate of character which you give him. I would, however, contrast the words which you cite with those of my adversary. Referring, as you do, to his explanations, as you call them, you will doubtless allow me to cite

his very words. The plaintiff is supposed to be well advised, and to understand his case. He complains of the evil for which he seeks redress, and he claims the interposition of the Court upon specific grounds alleged in his declaration. These are the *allegata* by means of which the defendant is apprized of the pretensions of the plaintiff The defendant, when he pleads, must confine himsel. to those *allegata*, that is, to the terms in which the plaintiff clothes his complaint. The proof adduced must necessarily be restricted to that particular kind of complaint. In this country the power of the judges is enormous, but, honestly and justly, they cannot travel out of the record. They are bound to decide the case as presented by the plaintiff. They can't make a different case for him. Thus, to make this plain to laymen, I would say, by way of illustration, that if the plaintiff claims a horse, the Court can't pronounce a judgment awarding him a cow! Again, the evidence adduced must relate to the allegations—all other evidence is illegal.

Your citation from Troplong may be thus translated: " The object is not to provide against a " damage which one has suffered, but against a danger or damage to come." I understand you then to mean that Brown's action was brought to recover £300, not for any actually existing damage, nor for any damage done before action brought, but for a prospective damage—a damage which might or might not occur years afterwards.

Admitting that my adversary might have brought that sort of action, I submit, for your information, that there is not in the allegations or " explanations" contained in the declaration, one word which could justify the application of the authority from Troplong. Had the plaintiff declared so as to expose me to the kind of judgment which you would have pronounced, I could have demurred, and the position of the parties would have been settled by the Court. As it is, the plaintiff rested his claim upon the extent of wrong done before he brought his suit, he made his own bed, and I marvel that you will not allow him to lie upon it. Not to interrupt the narrative, I offer for your perusal, in the shape of a note, as much of the declaration as is necessary.*

* The declaration is, upon reflection, omitted, as tending unnecessarily to swell these remarks, and as being of record, and accessible to everybody.

6. "The Appellant's right of action being established, the Court is "called upon to decide a question of fact: Has the Respondent erected "a wharf in the River Beauport, and does this wharf cause the Appel- "lant the damage he complains of?"

7. "On this head I find it impossible to entertain the slightest doubt."

Taking the sixth and seventh paragraphs together I find that you *entertain not the slightest doubt* that "I have built a "wharf in the river Beauport, and that this wharf causes the "appellant the damage he complains of." This result, the absence or exclusion of all doubt, you ascribe to the Harbor Master Lambly. Dealing thus with tangible matter of fact, you have descended to the level of intelligent, educated men of all classes, and brought to the bar of public opinion in a matter not susceptible of legal involutions and nice distinctions, you will in your turn be judged. Now then for the grounds on which the decision that I invoke is to rest.

8. "Let it be borne in mind that this part of the River Beauport was, "before the erection of the Respondent's wharf, navigable—Schooners "have sailed up as far as the Appellant's Mill. The evidence of the "Harbor Master Lambly, intimately acquainted with the locality, "leaves no doubt on the subject. Now let us look at the plans filed. It "is doubtful if a skiff of the very smallest size could at this day be "brought to the Mill."

9. "These plans clearly show the Respondent's encroachments on "the very bed of the river, and his utter disregard of the rights of others. "Surely the Appellant has a right to complain of these encroachments; "until they are removed, how is he to get grain to his mill, and send his "flour to the market?"

10. "In my opinion these encroachments render the Appellant's Mill "of little value, for, as he must resort to land conveyance, the expense "would be ruinous."

Your exclamation "let us look at the plans" amounts to a challenge to the whole world and to a permission to any one to contradict you, who in the legitimate exercise of his faculties arrives at a different conclusion. These plans, you say, "clearly show my encroachments in the very bed of the river "and my utter disregard of the rights of others." The force of egotism and cynicism could no further go. Why what donkeys the four judges must be, who could not see what is so very clearly shown! As a suitor I must submit to your remarks, but those judges all generally courteous have claims on your forbearance, and you might have been less arrogant. In giving publicity in print to opinions so much at variance

with theirs in a tone so trenchant and offensive, you compel every reader to institute comparisons, between them and you. I pause not to describe the inevitable result. But whether they fail to see what is clear, or you imagine that you see what does not exist, the Court of which you are a member must suffer and its usefulness be consequently impaired. Your fellow judges may or may not deign to notice the position in which you place them, but the judge whose decision you would have reversed is entitled to a large measure of respect. Having heard him deliver his judgment and understood him, as I have never understood you, I propose by reference to the plans to which you triumphantly refer, to prove how inferior to him you are.

Pinning your faith on Lambly, you will permit me to inscribe and to submit *without preface* his very words.

On the 16th of May, 1854, he testifies as follows: "I "have not had occasion to visit the river Beauport since the "year 1841." Here we have a period of thirteen years during which most important changes by alluvion and otherwise may have taken place. His intimate acquaintance with the locality to which you seem to me to attach undue importance has thus been interrupted and for a long time. But, he adds, "my recollection is not sufficiently good at this period to en-"able me to state in which direction the river flowed previous to the erection of the said wharf by the defendant." It will shortly appear that he has no recollection, no memory whatsoever.

On the 25th of March, 1855, examined again at the instance of my adversary, he speaks as follows:

"I have already been examined in this cause. At that "period I had not visited the premises in question in this "cause. I have since done so in company with the plaintiff, "who took me there for the purpose. * *I do not remember* "*the time.* It was about six weeks or two months ago. I now "recollect that it is more than two months ago. We went "there during the summer roads. During the time that I "was Harbor Master at Quebec, I frequently visited the river "Beauport and the premises in question in this cause. This "may have been in the year of 1840 or 1841."

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* The Italics are mine.

But these are the years during which he ceased to be Harbor Master.

" I have been higher up than the mouth of the river Beau-
" port several times before the visit of which I have spoken,
" *but never so high up as the mill.*" " The visits of which
" I now speak are the visits (*sic* in the original) to the river
" Beauport of which I have spoken in my examination in chief.
" (He had spoken only of one visit). On the occasion on
" which I went to examine the premises at the request of the
" plaintiff, he called for me at my house with his carriage,
" and took me to the premises. I staid there some time with
" him and he brought me home."

There are in the foregoing lines many proofs of the oblivion consequent upon age which might have excited suspicion. But you were a clerk in the same office with me, and you know individually that I was admitted to the Bar in August, 1822. But you have chosen *ex mero motu* to deny me fees on the ground that I was a practitioner. If you can judicially know a suitor, you are bound judicially to know an officer of the Court and the date of his admission to the Bar recorded in the Register. Now for Harbor Master Lambly.

" I have known the defendant from about the year eighteen
" hundred and eleven, for I was appointed Harbor Master
" about that time, and *I used to go into Court frequently*
" *where the defendant was practising.*"

Here is a fact worthy of your attention. Your Harbor Master, whose " *evidence leaves no doubt on the subject* " swears that I was practising at the Bar in 1811 ! Why I was then a boy at school, in Upper Canada, and obtained my first commission in the army early in 1812. Judge Duval, since this palpable misstatement made no impression upon your mind, what are we to think of you ?

But he adds : " Although on the occasions already refer-
" red to I have not gone up as far as the mill, I have gone to
" a distance within five hundred yards thereof. It altogether
" depended on the state of the tide. From that point I could
" see the mill and both sides of the river ; my object in going
" was in performance with my duty, and to see that there
" were no obstructions in the river."

I shall presently notice your judicial declaration that

"schooners" have sailed up as far as the appellant's mill, meantime I would remark that the witness himself *never* went up that far.

On the 28th June, 1855, your Harbor Master deposes *inter alia* as follows:

"I shall be eighty-four years next August. I find that my "memory is failing. I can remember occurrences which took "place when I was a youth better than those which are more "recent, I do not exactly remember the date of the last time "that I visited the river Beauport; but I used to visit it al-"most every year when I was Harbor Master, without *how-"ever going very far up*, for instance, not farther up than "the point at which you can see the middle of the stream;" (To see the middle of a stream one need not be in it, and this expression seems to imply that he saw the middle from its mouth, or perhaps below it;) "I had never been on Mr. "Brown's wharf until the period when, as I have stated in "my examination in chief, I went there to oblige him. It "was very lately that I went there, but *my memory does "not enable me to specify the time*." Since the period when "I ceased to be Harbor Master, I had never visited the "river Beauport until I went there to oblige the plaintiff, as "I have said. I am unable to say when that was. I must "be stupid to forget it, but so it is, I have forgotten it."

These admissions were assuredly sufficient to have neutralized that *intimate acquaintance with the locality* of which you saw fit to make such a parade, but you affect to rely upon that sort of evidence, and upon that sort of evidence I find that you would have ruined me ! ! !

Lambly had previously deposed as follows: "The plaintiff "is my neighbor, I now see his house from my window, I "have known the family of the Lady of Mr. Brown for a "great number of years."

Here we have the disclosure of a fact pregnant with consequences. It afforded my adversary daily opportunities for *talking over* an old man of 84 and moulding him to his purposes. The use which was made of those opportunities, were it only in the drive in my adversary's carriage, is a matter of inference.

Now for the particular facts, the basis of your judgment against me as reported in your opinion:

1stly. "That this part of the river (meaning the part along my wharf) was before the erection of that wharf navigable." This is your judicial statement implying that owing to that wharf it has ceased to be navigable.

2ndly. That schooners have sailed up as far as the appellant's (Brown's) mill.

3rdly. That it is doubtful if (whether would have been a more appropriate word) "a skiff of the very smallest size "could at this day be brought to the mill."

You pin your faith upon Lambly, and can have no objection to my citing in relation to the navigation, his very words.

"The river Beauport I look upon as little more than a creek, "the same as the river St. Charles. I consider all rivers "creeks which are dry at low water." Bearing in mind that Lambly was an Englishman, the word "creek" in his mouth has an English, not a Yankee signification. "The river "Beauport, he adds, is a small river, but is navigable at high "water to near the mill for bateaux, SMALL schooners and "so forth."

You have a genius for amplification. The plaintiff complains only of damage, but you set the judicial seal to it and it becomes very great damage. The witness upon whose testimony your judgment is founded indicates the size of the schooners, he used the word *small:* but unless the possession of judicial power places you above the reach of criticism, I may remark that you omit, of course, purposely omit, the qualifying adjective. You probably know too that bateaux, a primitive sort of lighter or diminutive craft, draw at most, when fully laden, from three to six feet of water. It was propably intended to represent them as being larger than the small schooners, in which case the "and so forth" might be intended to cover anything down to a canoe. If on the contrary the witness be understood to have meant to depose in an ascending climax, the "and so forth" may apply to a hundred and twenty gun ship! It was the business of my adversary to have proved his case by clearly intelligible and credible testimony, nor need I now speculate upon a part of his evidence not intelligible and therefore not likely to be taken into consideration by an impartial judge. "Schooners," you say, "have sailed up as far as the appellant's mill," and you cite no other witness than Lambly. Now begging your

pardon, Lambly does not say so. What Lambly says is that, "the river is navigable to near the mill for bateaux, small "schooners and so forth." But he himself on his own admission never was as high up as the mill. He therefore never saw any craft whatever sail up. His evidence then is merely inferential and not that of an eye-witness. Then inferential as it is, he does not say *how near* he infers that the small craft he describes did sail up, or could sail up. This is a point of which you make a great deal, and it was the interest of my adversary to have proved it if he could! If any craft whatever, to use your words, sailed up *as far as the mill*, they could scarcely be phantom ships, they must have been manned by living men, and have been seen by some one or more of the multitudes daily resorting to the mill. Now any one of any crew, or any single spectator could have testified to the fact. In your view of the case this fact is decisive. It was not my business to prove it, why did not my adversary do so?

You are pleased further to draw an inference which seems in your estimation to be conclusive. "It is doubtful, you say, if a skiff of the very smallest size could be brought (that is floated) up to the mill." The use of superlatives in the preceding sentence, unluckily for the plans to which you so triumphantly appeal, show that at the spot in question, the channel is 19 or 20 feet wide.

You speak of a skiff of the smallest size, and are evidently ignorant of the signification of the term. A skiff is a little boat so narrow that one man can pull two oars, one in each hand. They are, indeed, often made so narrow that the rowlocks are unavoidably attached to outriggers. Any one so inclined could have lately seen one in the harbor of Quebec, sixteen inches wide. As I believe it to be still within reach, I shall, whenever the necessity arises, produce it as an exhibit. Now, sir, you have, upon my authority, the breadth in inches of a skiff of the smallest size. Do you doubt that it could pass through a space 19 or 20 feet wide?

You distinctly and positively affirm that the *evidence* of Lambly *excludes all doubt* that I have erected a wharf *in* the river Beauport. Lambly avows that (until he visited the spot to oblige his neighbor the plaintiff) he "*had never been so high up as the mill.*" He specifies a particular distance

to which he did go, and that distance is "within five hundred yards thereof."

Now Judge Stuart is not the man to look at plans affecting the rights of parties, as a little girl gazes at Punch and Judy in a puppet show. He doubtless stretched the legs of a divider over the plans of which you speak; he thus found that 500 yards extended to low water mark, a distance of 200 yards from the mouth of the river. If Lambly's evidence in reference to the distance, was correct, he never had even entered the river Beauport, but, as he said that he had entered it, we will suppose the judge to have made an allowance of half the distance. This is certainly doing a great deal for Lambly. Lambly then, who admits that he had "*never* been as high up as the mill," may be supposed to have entered the river (as he says, in a boat) as far as a spot situated some 250 yards below the mill. Now, between that spot and the mill, there is, as you know, a sharp angle or turn in the river, making it quite impossible that Lambly could have ever seen the "locality" as you call it. The edifice which you have thus erected upon the evidence of Lambly, is demolished by reference to the plans.

But, incapable of yielding, you will require more demonstration. Lambly says from that point (at 500 yards) "he could see the mill and both sides of the river." "Now let us look at the plans;" Lambly never could have seen both sides of the river at the locality, nor indeed either side, at 500 yards or even at 250 yards. What would you think of a tailor who should undertake to furnish you with a nether garment without taking your measure? Had you in your judicial capacity in a suit involving thousands, measured the spot as you would expect a poor tailor to do you in a suit of no kind of importance, you would have ascertained that no confidence could be reposed in the evidence of Lambly; I make this remark without impeaching his character, and solely because he had reached an age before which "Swift had become a driveller and a show."

Permit me to submit another view of the subject.

In your contrast between a skiff of the very smallest size, and a schooner, you intend to exhibit on the one hand exiguity, on the other, bulk. You define, it is true, only the skiff, but you expect the imagination to do the rest. This is your

idea, made manifest by the suppression of the adjective small. But, as you are evidently ignorant of the possible proportions of a skiff, you are not informed of the characteristics of the schooner. It is not a question of tonnage, as you probably, without inquiry, assumed, but of masts, spars, and cordage ; it is not the size, but the rigging, which constitutes the schooner. Now a schooner may be a large vessel of 300 tons, and it may be a small vessel of ten tons. A small schooner may very well be only ten feet in breadth. The channel then in front of the natural bank upon which my wharf is built might possibly have been, and at high water may still be, navigable, as Lambly says, for *small* schooners as far as the mouth of the tail-race. But though a *small* schooner should sail up to *near* the mill, it could not sail up (as you say) as far as the mill. Lambly may have known that the tail-race, only five inches wide, and the rise in the land, would prevent it. Thus then, dealing with the testimony of a man of good character, tottering on the brink of the grave, you have imputed to him, negatively, one untruth, and affirmatively, another. By suppressing the word *small*, you expose him to a very serious charge, and by substituting the words " *as far as* " for " near," you subject him to another. The good old man deserved better treatment.

Lambly, avowedly too old to remember, who had never been as far up as the mill, was assuredly no authority. Had he been in possession of his faculties, he could not have overlooked the bank upon which my wharf is built, nor could he have failed to remark that the bank, the natural bank, was the lateral limit of the navigation as much as the wharf built on it.

It is, however, upon such ground that you venture to add that owing to my wharf the " appellant must resort to land " conveyance, and that the expense would be almost ruinous." You thus assert, by implication, that he had before that period used water conveyance, for which there is no authority, and could be no authority whatever. He has always used land carriage in that locality, and found profit in it.

In the ninth paragraph you manifest a most alarming ignorance of the appellant's mode of transporting his grain and flour, and you ascribe to the plans a power, effect, and influence, which I dare not characterize. The appellant has

never moved grain or flour in that direction, nor has he any occasion to do so, or any interest in doing so.

11. "The Respondent at one time attempted to justify these encroach-"ments by claiming title to the bed of the River, which, he said, he ac-"quired from the late *Seigneur* of Beauport."

12. "On reference to the Respondent's deed, it will be found he did "not acquire his property from the late Mr. Duchesnay, as *Seigneur* of "Beauport; he therefore can claim none of the *Seigneur's* right of pri-"vileges. Moreover, the Judges of Lower Canada have decided the "*Seigneurs* never had such a right, See Lower Canada Reports. *Ques*-"*tions Seigneuriales*, vol. A, page 130, à des Riviéres Navigables."

Questions of law are not to be discussed by the profane, and I grant your infallibility in matters on which all the Courts and all the Judges are proverbially unanimous. I complain, however, of a mistake or misrepresentation to my prejudice, contained in the 11th and 12th paragraphs. You say " that at one time I attempted to justify my encroach-"ments by claiming title to the bed of the river, as having "acquired it from the late Seignior." You mean, of course, against all the world. Now I certainly did not do any such thing. My position was this, that in my adversary's own title in the deed of conveyance to him, there was a reserve *in my favor*. In the third page of my factum I intimated that it *might not be well founded against* the rest of the world; but that, being a reserve in his own deed, in which I *was named as being in the rights of the late A. J. Duchesnay, Seignior of Beauport*, he, my adversary, who bought upon that condition, was estopped from controverting that position. If this should be, as I hope, intelligible to laymen, they will perceive that I thus raise between you and me a serious question, and that I distinctly deny having, in the remotest manner, admitted encroachments on my part. In the second page of my factum you will find the above mentioned condition of his deed quoted to establish this proposition, that my adversary could no more encroach on me than he could encroach on Mr. Duchesnay. In case you should revise your opinion, I submit this statement for your guidance.

13. "As to the allegation that the Respondent was forced to erect "this wharf to protect himself against the works of the Appellant, on the "opposite side of the river, it shows a clumsy attempt to justify an act "done in open violation of the laws of the land, and of neighbor's "rights."

You condemn not the attempt alone, but the manner of it. Had it been ingenious instead of clumsy, would it have pleased you more? But in your mouth the word clumsy amounts to a compliment as denoting incapacity or inexperience, or both, in wrong doing. It was clumsy, you triumphantly declare, and of course instantly detected by you. You deal, as is your wont, quite unceremoniously with four judges, who thus receive under your hand a certificate of character for comparative obtuseness. This is surely an unnecessary "lifting up of your horn." But if the attempt was so clumsy, why could not the three first judges who heard the cause, detect it? Why did they order an expertise, and in despite of my remonstrances founded on my opinion of you, refer the question to your step-son, as an engineer and a practical man? How was it that forty-seven persons, half of whom are men of high social position, men of education and principle, men distinguished for scientific attainments and professional ability, all of them in every way unconnected with and independent of me; how was it, I say, that so many persons could be so blind or so wicked as to give the evidence of record? You have thus forty-seven witnesses, three experts, and seven judges, who could not see the clumsy attempt which is to you so very plain. The odds are great, but that is not all. I argued that the plaintiff could stop his mill at pleasure, and ascribe the stoppage to me. I added that as I could not place any person in the mill to prevent his resorting to trickery or artifice in order to deceive the Court, I was in his power. "Now let us read the testimony of one who had "been four years his clerk in the mill."

Patrick O'Brien deposed as follows: "The plaintiff has "not to my knowledge suffered any damage in consequence "of the erection of the defendant's wharf previous to the 29th "October, 1852," the day of the institution of the action. He adds: "In my examination in chief I stated that the "building of the wharf had caused a rise of the water which "threw it back upon the mill race and put the wheel in the "water. I have since ascertained that this was an error, "and I now know that this was produced by a quantity of "stone and rubbish that were in the mill race. These stones "and rubbish have since been removed and the mill race "cleaned out, since which the evil has ceased."

The foregoing declaration covers the period from the date of the erection of the wharf down to the day of his cross-examination (March, 1856). Here, too, is proof of the stoppage of the mill by means of rubbish, which, but for an after thought, would have been imputed to me, but the clumsy attempt which you see, is invisible to the witness.

Here, also, is proof of an attempt to my prejudice, against which I was perfectly defençeless, nor will you consider it clumsy. It is nevertheless the plaintiff who intentionally elicited the evidence in chief, which, but for the conscientious scruples of his clerk, would, by means of a falsehood, have established, incontrovertibly, his right of action. But the clerk, who speaks like a man of intelligence, who was clearly interested in supporting, and bound to support, his employer, whose attention was doubtless on the stretch, could not see the clumsy attempt which you so instantly detected.

14. "I have abstained from adverting particularly to the facts, be-
" cause they are so minutely noted down and ably commented upon in
" the report of the experts, Baillargé and Stavely, that I could do no
" more than uselessly repeat what they have well explained."

You declare in the 14th paragraph that you have abstained from adverting particularly to the facts because they are noted *down* and ably commented upon by the experts. You have thus three reasons for ignoring the facts, firstly, the factums of the parties; secondly, the opinions of some of the judges, and thirdly, the noting down of the experts. What you mean by noting *down*, unless there be be in your judicial opinion a noting *up* which has a different signification, I shall not pause to consider. That you should compliment your step-son Baillargé, whom you evidently believe to have been unfavorable to me, is natural, but notwithstanding his relationship, to you, I hold him as a man of rare talent, in great comparative respect, and feel strong enough to overlook the abortive efforts to which your commendation is to be ascribed.

Your step-son specifically admits that the bank (on which my wharf is built) forms a *natural* obstruction to the flow of the water. He reports that my wharf has not obstructed any channel, canal or passage, for none existed when my wharf was built. He adds, that the trees growing upon the above mentioned natural bank (on which my wharf is built) are pretty good evidence of themselves of the truth of the fore-

going assertion, that my wharf does not (as the plaintiff pretended) traverse the river or any part of the river. What could you have more?

15. "For the above reasons I must dissent from the judgment dismis-"sing the Appellant's action. I would limit the Respondent's right of "property to high water mark, and order the removal of all works beyond "this line."

Concluding this branch of the case, in the fifteenth paragraph, you judicially declare that for the *above* reasons you must dissent from the judgment; Above, an adverb, and a preposition, not an adjective, would not have found such a place in a sentence written by any man of education. If when the reasons precede the deduction you can say the *above* reasons, when the reasons follow the proposition you can surely say *for the below* reasons or the *under* reasons: the one is not a whit more barbarous than the other. Thus when in the very first sentence you decide that my wharf has caused Brown *very great damage*, you might have elegantly added "for the before or the after reasons." You have, however, I take it, assigned all your reasons for dissenting, and characteristic as they are, they are submitted for the consideration of a discriminating public.

OF THE COSTS.

16. "On the question of costs, I concurred with the majority of the "Court, in refusing fees of office to the Respondent, who appeared in "person, and conducted his own case. This is in conformity with the "jurisprudence in France. Costs were refused to Mr. Vallières de St. "Réal, a practising Barrister at Quebec, so far back as the year 1822,* by "the Court of King's Bench, the late Chief Justice Sewell presiding. It "has been said that subsequently the Judges had allowed the fees. But "the three or four cases cited do not establish this. In one of the cases "referred to, the Judge has told me that he had not so decided, and that "his opinion was against the claim for fees. Jousse, in the 2nd vol. of "Justice Civile, p. 460, No. 38, says:—'Les *avocats* qui écrivent ou pré-"sident pour eux dans les affaires, qui les intéressent, ne peuvent se faire "payer de leurs plaidoiries ou écritures; sauf à demander s'il y a lieu, "des *dommages et intérêts à cet egard.*"

The rights of persons and the question of fees dependent thereon, are to be governed by the Public Law of England,

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* I have searched in vain for this decision. It is not to be found, but His Honor did not imagine that I would dare to search, still less to contradict him.

which, in relation to that subject, is the Law of Canada. *Ex proprio motu* upon the ground of a supposed identity, never noticed at the Bar, to deny fees to an Officer entitled to fees, in the absence of any offence, without evidence, without trial, without complaint, and even after my adversary had acquiesced in my claim to fees, is manifestly arbitrary and illegal.

But my claim is sustained by several ordinances of the French Kings, by the practice of the French Courts, and, as the following extracts prove, by the rules on this subject, promulgated by Commentators of the highest merit and authority.

Paris, Edition 1623.—*Imbert.—De la condamnation des dépens, taxe et liquidation d'iceux.*

"Le juge en toute sentence doit condamner celuy qui perd sa cause, "envers celuy qui la gagne ès despens....comme il est dit par l'Ordon-"nance du Roi Charles VIII, art. cinquante."

"L'Ordonnance du Roi Charles IV, 1324, veut que celui qui succombe "en cause doit estre condamné aux dépens envers sa partie adverse "suivant le droict. Aucun colligent [for some collect or under-"stand] de l'Ordonnance de 1493, et de celle de Charles VIII, ré-"citée au texte de notre auteur, que, quelques causes que ce soit, encore "qu'elle soit juste et raisonnable, n'exempte point que la partie qui suc-"combe ne soit condamnée aux dépens."

Le nouveau Praticien Français, par M. René Gastier, Procureur en la Cour du Parlement de Paris, Edition de 1665.

"Maximes établies par les lois et jugées par les arrests, concernant les "dépens, dommages et intérêts, *pour servir d'instruction aux juges qui en* "*prononcent* la condamnation et aux procureurs et praticiens qui assistent "à la taxe et liquidation d'iceux."

Titre de la taxe des dépens.

"C'est une règle générale en procès que celui qui a perdu sa "cause, soit demandeur, ou défendeur doit être condamné aux dé-"pens, envers celui qui a obtenu; *victus victori in expensas sumptus* "*que litis condemnandus est, properandum* 13, *sine autem* § *C de judic.* "C'est l'Ordonnance de Charles IV, de l'an 1324, qui porte que "celui qui succombera en cause sera condamné ès dépens envers sa "partie adverse et ce, nonobstant qu'il y a coutume contraire, que "le Roi déclare par ses ordonnances, abusive, au registre cotté *Or-*"*dinationes antiquæ*, fol. 3. Ce que Justinien enjoint aux juges si estroite-"ment et précisément que s'ils oublient ou négligent de ce faire; *ipsi de* "*proprio hujusmodi pœnæ subjacebunt et reddere eam parti læsæ coarctabun-*"*tur.* Il prend la condamnation des dépens *pour peine*, qu'il veut *que* "*les juges portent et payent de leurs propres deniers*, qui n'auront condam-"ès dépens celui qui aura perdu sa cause. Aussi [for ainsi?] a été jugé "par arrêt du Parlement de Paris, du deuxième janvier, 1569.

" *Quid de celui qui a lui-même conduit sa cause et ne s'est servi du minis-*
" *tère d'aucun advocat ni de procureur : je tiens que l'advocat qui a écrit ou*
" *plaidé pour soi et obtenu les dépens peut requerir taxe de ses salaires ne*
" *pouvant être contraint de remettre son labeur et quitter son travail à celui*
" *qui l'a vexé indument ; pour récompense de laquelle indue vexation et en*
" *rémunération de sa témérité il obtiendra une immunité et exemption de*
" *dépens. Autrement serait astreindre les advocats de commettre leurs af-*
" *faires entre les mains d'autres personnes de semblable qualité, qui, vraysem-*
" *blablement ne prendrait rien d'eux, ou de faire signer les écritures par eux ;*
" *car de remettre leurs salaires en ligne de dommages et intérêts ce serait une*
" *chose infinie et qui d'ailleurs ne s'est jamais pratiquée.*

"La raison de Maistre Clément Vaillant est, *que qui peut et veut ne doit*
" *estre empêché d'écrire et de plaider pour soi.*

LA JURISPRUDENCE DU CODE.

Les coutumes et les décisions des cours. Par M. C. Ferrière, Livre VII, Paris, Edition of 1684.

" *Quoique celui qui a obtenu gain de cause ait fait lui-même toutes les*
" *écritures, toutefois il obtiendra la condamnation de dépens contre sa partie,*
" *parce qu'il n'est pas juste que sa partie, qui a succombé,* profite de son tra-
" vail, *et il faut qu'il y soit condamné comme si c'était un autre qui les eût*
" *fait. Outre que cela serait injuste autrement,* parce que celui qui aurait
" obtenu gain de cause, aurait pu employer son temps pour d'autres et
" faire le même gain qu'il doit avoir fait en travaillant pour lui-même,
" s'il ne pouvait pas en exiger le salaire."

Code Civil ou Commentaire sur l'Ordonnance de 1667, *par M. Serpillon, Conseiller Civil, etc. Titre* 31e [*Des Dépens.*] *Edition of* 1776.

" Toute partie soit principale ou intervenante, qui succombera même à
" un renvoi déclinatoire, évocations ou règlements de juges sera condam-
" née aux dépens indéfiniment, nonobstant la proximité ou autres quali-
" tés des parties, sans que sous prétexte d'équité, partage d'avis, ou quel-
" que autre cause que ce soit, elle en puisse être déchargée ; Défendons
" à nos cours de Parlement, Grand Conseil, cours des aides et autres,
" nos cours, Requête de notre Hôtel et du Palais et à tous autres Juges,
" de prononcer par hors de cour sans dépens, Voulons qu'ils soient taxés
" en vertu de notre présente ordonnance au profit de celui qui aura ob-
" tenu définitivement, encore qu'ils n'eussent été adjugés, sans qu'ils puis-
" sent être modérés, liquidés ni réservés.

" *Quoiqu'une partie ait fait elle-même les écriture de son procès, les dépens*
" *ne lui en sont pas moins dûs,* parce qu'il ne serait pas juste par la partie
" qui a succombé, profitât de son travail. D'ailleurs, celui qui a obtenu
" gain de cause aurait pu employer son temps pour d'autres et faire le
" même profit dont il serait privé, s'il ne pouvait exiger ses vacations."

Procédure Civile du Chatelet, Paris, Edition of 1779, *de l'Instruction, liv. II, partie II, par M. Pigeau, Avocat.*

" *Les procureurs peuvent exercer leur ministère pour eux,* leurs femmes,
" enfants, et parents, à la différence des huissiers et autres officiers de
" justice."

Conférence de Bornier, Tome 1er, Edition, 1729, Titre XXXI, Des Dépens

"Il faut encore observer, que quoique la partie ait omis de demander "la condamnation des dépens, cette omission ne donne point d'atteinte "à la sentence, et n'empêche pas que la partie qui succombe n'y doive "être condamnée, tout de même que si l'on les avait demandez. La "raison est, parce qu'en matière de contrats et de sentences on supplée "aux choses, *de quibus verissimile est partes cogitasse, Gloss, in l.* 3 § *si* "*rem, verbo Fortassis, de leg* 3. *Anfrer. decis.* 5. *Mattesil. Singul* 81. *Re-* "*buff. trait. de Expens. art.* 2. *Gl. un. num.* 49. *Boer. decis.* 18 *G. P. qu.* "55. *& ibi Ranchi.*"

"Cette condamnation était si indispensable, que si le juge n'avait pas "prononcé sur les dépens, il était obligé de les payer en son nom propre "à celui qui avait gagné le procès par son jugement."

The Judges of the Court of Queen's Bench being divided on the question of costs, directed the Prothonotary of the Superior Court to certify the practice. That officer accordingly certified that since Sir James Stuart became Chief Justice in October, 1838, the uniform practice had been to grant costs to Attorneys who conducted their own causes.

In proof of this practice during a period of twenty-three years, I would cite the cause No. 846, decided upon the 2nd June, 1846. The plaintiff, "*James Motz, Advocate,*" on that day obtained judgment against the two defendants, Lampson and Arnold, and although he had conducted his own case in person, the Court granted fees. That Court was composed of the four Judges, Chief Justice Sir James Stuart, and Justices Bowen, Panet and Bedard. A different course may have been previously pursued, but the practice was thus settled and adhered to from the above-mentioned date. It is inconceivable that you should ignore the existence of that practice. To prove it, the case of Motz ought to suffice. But in April, 1839, three similar judgments were pronounced—Firstly No. 632, in which J. U. Ahern was plaintiff, another, No. 643, in which J. W. Lloyd was plaintiff, and a third in which Félix Fortier was plaintiff, all three practising attorneys, as you know. I submit further that the case of a defendant is more favorable than that of a plaintiff. Then there were in 1856, No. 2133, Alleyn *vs.* Gilbride; in 1857, No. 1417, Pentland *vs.* Smith; in 1859, No. 1959, Pentland *vs.* Bell, and No. 2147, Pentland *vs.* Bell.

The series you see is unbroken, and, as Judge Mondelet intimated, in the District of Montreal, the question has never been raised.

In conformity with that practice, you yourself, Mr. Justice Duval, have granted costs in such a case. It bore the No. 1085, and by the judgment dated 28th June, 1851, which you pronounced, fees were allowed to the plaintiff, Lawrence Ambrose Cannon, who, suing as advocate and attorney, had appeared in person. In that case too the attorney for the defendant, a widow, had compassionately made the objection. The reason assigned for denying me fees was, however, that I conducted my own case—a point relative to which no kind of evidence was adduced.

I am in possession of office copies of your judgment, nor am I aware of adverse decisions, and the Court certainly cited none.

Judges who adjudicate upon the fact are apt to sneer at Juries. Jurors are certainly not perfect, but they are a check upon Judges. The latter are no better than other men, and I have known Judges much worse. To grant or deny costs at pleasure was in France a common mode of favoritism, and in that country the Legislative power seems to have been incessantly engaged in promulgating edicts for the repression of that abuse. You will have noticed that the successful suitor who was denied his costs had a right of action against the unjust Judge who pronounced the judgment, and it is my intention to institute against you such an action. Of course, we shall then hear a great deal of the immunities and privileges of English Judges, but on that occasion I shall have a word or two to say, and won't anticipate.

You rely upon Jousse, and make light of Serpillon. The difference between them is this, that Jousse gives his own opinion, Serpillon the opinions of earlier writters confirmed by his own. But Jousse speaks only of the AVOCAT? How does that apply to what from your judicial eminence you call a "Practising Attorney." Then Jousse admits the right of the *Avocat* to sue for compensation by a distinct action. The two authors then only differ as to the manner in which the claim should be enforced. According to Jousse I could bring an action to recover "*des dommages et intérêts à cet égard*," against my adversary. According to all the other authorities I am entitled to recover in the original action. Which course do you prefer, a single action decisive of the whole controversy, or a series of them?

17. "Were it required to cite any case to show the wisdom of the Rule, "the present might very properly be selected. The zeal of the Respon- "dent, carried to excess, has not only caused angry discussions between "him and the Experts, but it has led to violent altercations with at least "one witness, who has instituted against the Respondent an action of "damages for slander, lately submitted to this Court."

An Englishman arrived in Canada for the first time in 1854. He reached the *Parish* of Beauport in December, and probably never saw the river free from ice and snow until May or June, 1855. Nevertheless, produced as a witness by my adversary, this man undertook to describe the condition of the river in September, 1852, two years and three months before his arrival: and in your judicial capacity you would have interdicted such remarks in the exercise of the right of self-defence, as would be naturally wrung from any defendant on such an occasion. "And if," says the Lawyer, "had the case been yours would that have been your opinion? Your son-in-law seems to have imbibed some of your views, and he evidently imagines himself to be invested with some of your authority. He has accordingly made a report which has been severely animadverted upon by all the Judges, yourself only excepted. I am not, however, aware that he complains of my personal deportment, and on the contrary I have understood, that all the experts had used in reference to my conduct in their presence complimentary language. It is certainly my earnest desire, and invariable custom to be civil. It is indeed with me a constitutional necessity, but then one occasionally meets people so coarse and swinish!"

18. "Had the judgment awarded costs to the Respondent, how could "a Judge in vacation have taxed, in favor of the party, the fees of office "allowed to the Attorney? Let it be remarked that the Provincial Sta- "tute authorises Courts of Justice to make a Tariff of Fees, in favor of "practising Attorneys, but does not authorise them to grant them to "either party, Plaintiff or Defendant. The Court therefore could not "grant the Respondent any more than it would have awarded had he "been a trader or a mechanic. This appears reasonable. Were a diffe- "rent rule laid down, a practising Attorney might become the terror of "his neighbors."

A practising attorney waging an aggressive warfare might be obnoxious to the suspicion of terrorism which you suggest —but it cannot apply to an unhappy man, acting as I do, *purely on the defensive!* Then you know that there is a canon which settles the point, *cessante ratione cessat lex.*

The rule that you have laid down is, however, as a measure

of precaution, so easy of evasion as to be quite inoperative. A practising attorney who should desire to flourish in history as a "terrorist," would always find an accomplice ready to lend his name, and to sign all the requisite papers—the very case supposed by Gastier in 1665.

Could you but "*lay down a rule*" to prevent the rich suitor from grinding the poor—could you but interpose, by any means, between the pettyfogger and his victim—what a public benefactor you would become.

19. "Serpillon's opinion (cited by the Respondent), is of little weight. "He refers to no decisions of the Courts, and his reasoning is strongly "against his opinion. He says a lawyer ought to be paid for his work. "This granted, what answer could be given to a shopman or mechanic, "claiming to be indemnified for loss of time? What amount could the "Judge allow? Certainly not the fees given by the tariff, which were "never intended to indemnify a party to the suit for his loss of time."

Your above written reasoning is not convincing nor indeed quite intelligible. Does the Statute exclude an attorney from being plaintiff or defendant? Is he less an attorney because he is plaintiff or defendant? Is there not a tariff of fees for attorneys, and is there a like tariff for traders and mechanics? Is a practising attorney prohibited by law from holding real estate? And should he, as holding real estate, be dragged into Court, and be kept there for nearly ten years, is he to be stigmatized as "the terror of his neighbors" because he defends himself successfully?

Mr. Justice Duval, the power of an attorney for evil is controled by the power of the Court for good. The attorney can be at all times restrained by the Court, always promptly and effectually restrained: but the Judge is scarcely within the reach of any human tribunal. Without the intervention of the Royal prerogative of mercy, Gray, whom you condemned to death at Montreal, would have been hanged! And the enquiry into the failure of justice in the case of Corrigan having been effectually stifled, the manes of that martyr are not yet appeased.

Your eyes then might have been profitably turned in another direction, but had I been a practising attorney I durst not have compromised the interests of my clients by such an enormity as in dissecting your opinion you will hold me to have committed. I am not at all insensible to the losses, the difficulties and the dangers attending the vindica-

tion of my rights, but I am ashamed of the fear of the Judges exhibited in so many quarters, and having suffered prodigiously, being indeed without hope, I borrow courage from despair.

A. GUGY.

APPENDIX D.

The late Simeon Lelièvre used to relate an instructive story. He was it seems entitled to remuneration for some public service. It was necessary to undergo some examination, some process to fix the amount, and it was fixed by a committee. A member of the government was eventually selected to give effect to the recommendation of the committee. He had been a member of it, he had concurred in its decision and report; but he eventually reduced the item considerably. When reproached for this act, he is understood to have admitted that the original amount allowed was reasonable; but I diminished it, added he, (as I was known to be your friend) to show my impartiality. Here was a wrong done under the influence of self-love; but of course that functionary was not promoted, nor had he ever the power to do any other wrong, nor would he under the influence of self-love or of envy, or of any kind of uncharitableness have availed himself of his power to do wrong—not he.

APPENDIX E.

The temptation to submit for the consideration of the public a copy of a letter written by me, and at my request *delivered* to my adversary Brown, being irresistible, I offer it as follows:

MR. WM. BROWN, Quebec, 21st May, 1867.

SIR:—Unaffectedly desirous of buying my peace I venture to address you directly, because that course seems to me to be more conducive than verbal communications to the desired result, nor am I afraid to write what I should be disposed to say, for on me spoken words are as binding as written words. I thus address you because Mr. William Bell informed me that you were at last disposed to cease from persecuting me, as you have done incessantly for now nearly fifteen years.

Should you happily be in that frame of mind, I beg that you will suggest in writing, in detail and in the form of a notarial agreement, the terms upon which you are willing to allow me to live in peace. The foregoing words must be understood to imply that every subject of difference between us should, without any manner of exception, be included in the proposed deed.

It behoves me, however, to be perfectly plain with you. Accordingly I insist on it, as a preliminary condition, *sine qua non*, that you cause your Attorneys, Messieurs Bossé, to cease, pending negotiations, from worrying me with executions, endless, and to me ruinously expensive, but to them exceedingly profitable, proceedings.

Secondly.—In view of my age and approaching demise, I shall claim the insertion of a clause binding you to refrain from renewing the attempts, in which you have been defeated, under a heavy penalty, in favor of my successors. If it please God, they shall be exempt from the torture which your great wealth has enabled you to inflict upon me.

Thirdly.—I should wish you to bind yourself to refrain from buying my debts.

It is not my intention that the *enquête* in the case No. 581 should be postponed, nor until the execution of the proposed deed shall I pause in the exercise of the right of self defence, the first law of nature.

I have no manner of objection to your selecting your own notary whoever he may be to prepare the deed, of which the draft must be submitted to me. Should I approve, I shall instantly subscribe it. Should I be desirous of adding, retrenching or modifying, I reserve the right of conveying my views in the margin. It should therefore be wide.

I remain,

Sir,

Your obedient servant,

A. GUGY.

I am not so constituted as to carry, still less to use a revolver; but I had seen my adversary's servants, and on one occasion himself, engaged in working in the bed of the river in a manner which would have induced many to resort to fire arms.

On two distinct occasions I had therefore employed a most respectable notary (Mr. Huot,) to protest against my adversary, Brown. My statements of the wrong done me by his diversion of the channel of the river have been since fully proved, among others by Mr. James McCorkell, a man of sterling worth, who would do honor to any community. He among others swore that by heaping stones in the river half of its breadth had been taken up. It was to prevent that result that I protested. Yet to one summons to desist, my adversary Brown replied that I was an "*infernal liar!*" to the other that my statement *was a pack of lies throughout!* Thus he made no ceremony with me. But on the morning subsequent to his receipt of the foregoing letter, I received at the Post Office a dingy envelope and on opening it, *found my letter* returned by Mr. Brown, *without a syllable!*

He has since admitted the fact on oath, and it seems that he considered that communication an insult.

I refrain from dilating on the circumstances.

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