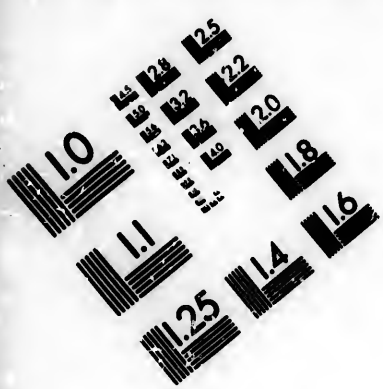

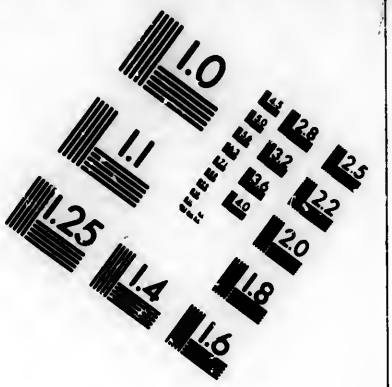

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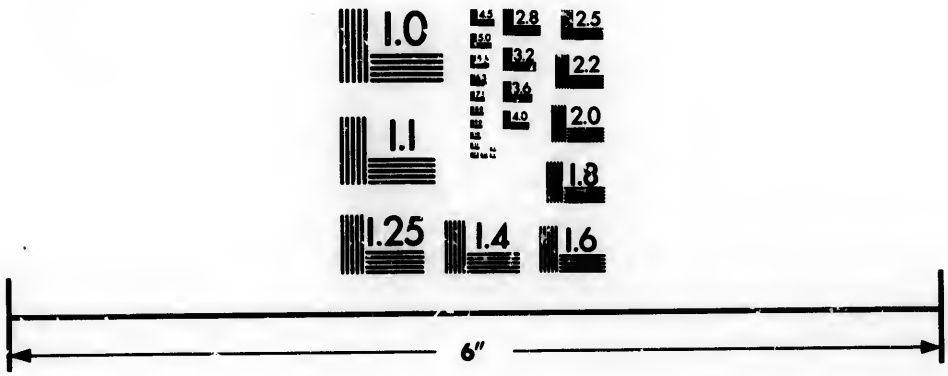

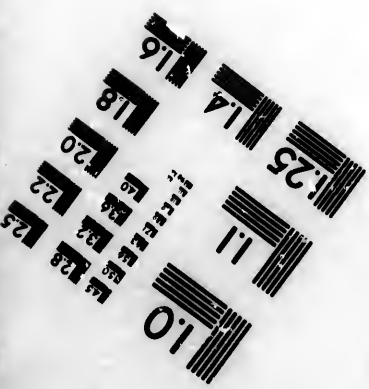

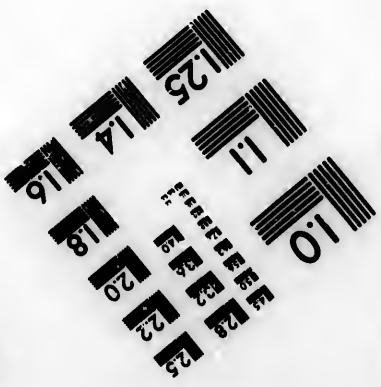

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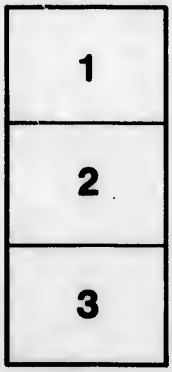

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Gugy

LEGAL INTELLIGENCE.

In an article under the above written head, published in the *Chronicle* of the 16th of January instant, *in re* Gugy *vs.* Brown, Chief Justice Duval is reported to have expressed himself in the following language :—

First Sentence.—"The Appellant would not, I think, "have succeeded in his action even in the Courts in France."

Second Sentence.—"Domat, who cites the ordinance of "1539, says, that ordinance had gone almost out of use."

Third Sentence.—"It appears, however, to have been "revived for vexatory actions, under the modern law of France."

He opened in that manner. Those are his very words, taken by a stenographer of ability—words which I heard and naturally noted. That I may do him no injustice, I shall submit to a discriminating public the meaning which I attach to the foregoing words.

His Honor speaks neither English nor French with elegance, nor indeed always with propriety, but he probably intended to convey the meaning which the readers of this note will gather from the underwritten words.

"In my opinion the Appellant (Gugy) would not have "succeeded even in France, for the ordinance of 1539 had "(according to Domat) almost fallen into disuse."

"It appears, however, under the modern law of France, to "have been revived for vexatious actions."

The word "vexatory" is not English, and, for obvious reasons, I am unwilling on this occasion to use the words "gone almost out of use."

But applying my faculties to the subject, and hoping that the reader will follow me, I venture to say that I understand the Chief Justice to have given his opinion and the grounds of his opinion. It is as if he had said, "The Appellant would "not have succeeded in France because the ordinance had "almost fallen into disuse."

Here, then, appealing to every lawyer, to every man of sound judgment and common sense, I would enquire whether the word "almost" does not so far qualify the sentence as to prove the Chief Justice to have assigned an insufficient reason, to have proclaimed from the Bench a *non sequitur*. It may, it is true, be proper to refrain from enforcing a law fallen *entirely* into disuse. Admitting, in favor of the Chief Justice, that proposition, I maintain that a law may be said to have "gone *almost* out of use," not because it is a bad law, but, on the contrary, because it is so good a law that it has not for a long time been violated, or that transgressors have been few and far between. Thus the law prescribing the double sleigh, which was an excellent law in winter, but a dead letter in summer, might be said every autumn to have "almost gone out of use." Would that justify the refusal of the Chief Justice on fitting occasion to enforce it?

Taking, for example's sake, the city of New York, I submit that there the whole press "says that the gallows and hang-

"man *have gone almost out of use*," or in equally elegant phraseology, that "hanging for murder is played out!" This statement is assuredly better proved than that of Domat, a single witness. Now, one would like to know the opinion of the Chief Justice upon this most important fact. Punishment for crime, an institution as old as man, is in abeyance. Does the Chief Justice approve of that condition of society? Does it, in his opinion, conduce to the safety of person and property, and to the well-being of the citizens? Were an attempt made to revive it and to hang for murder, would he sneer? Is the habitual recourse to the revolver, begotten there by judicial corruption, a preferable mode of obtaining justice?

Again, adverting to the merits of the question, and holding with the Chief Justice that my action was founded on the ordinance of 1539, whereof I submit a translation in a note, I allege that His Honor has quite overlooked the question of *time*, an important element.

He himself draws a distinction between the period at which Domat wrote and modern times. He says or "thinks" that I would not have succeeded in France because the ordinance "had gone almost out of use," and his quotation of Domat fixes the period. But with more sincerity than discretion he adds that the ordinance has "*been revived*" for what he calls "vexatory" actions in the modern law of France.

Now, it seems to me, *upon his own showing*, (for I will not travel out of the record) *upon his own showing*, I say, to follow, that although I might have failed 100 years ago when Domat wrote, I should succeed now. This is, in my view of the case, all the more plain, because oppression under color

of law, because the grinding of the poor by the rich, because the curse of usury and its attendant horrors, of all which I have, during now twenty years, been the victim, may after Domat's time have increased so frightfully as to necessitate the revival of the ordinance; and its revival would produce no effect unless it were enforced.

As a reason for its application here, I would refer to a well known fact. France is peopled by a homogeneous population, professing one religion, speaking one language, and the influence of more or less of charity, of sympathy, must be felt in every circle. Our society is composed, on the contrary, of heterogeneous materials. We have English, Scotch, Welsh, Irish, many German, French, and Yankee immigrants, contending in the same walks of life with natives of French descent and of English descent, and very prodigally manifesting their dislike or their contempt for both. Now, I am simply a native Canadian, and Brown, my enemy and my neighbor, whose property would certainly be very nicely rounded off "by mine" if he could get it, is a recently imported European. A single fact will prove how utterly devoid of charity he has been in his intercourse with me.

In the case in question *he has admitted,* and *eleven* judgments pronounced in actions *brought by himself* against me prove, that I am the proprietor of the ground which he covets as Ahab coveted Naboth's vineyard, and which he has since September 1852 been attempting to wrest from me. Among other means to effect his purpose, he has resorted to the buying up of my debts—*a fact which he has admitted on oath.* But that is not all. I have proved, to the evident conviction of the Jury, that he declared, should he die before he effected

his purpose, he would by his will impose upon his heirs and legatees the duty *of continuing the litigation until they succeeded in wresting from me my property!* This is a fact, and I confess that, startled, alarmed by the possible fate of my descendants, I resolved to anticipate the posthumous war with which they were threatened.

Judges Duval, Badgly, Meredith and Stuart, it is true, are against me; but I trust in God and in trial by Jury. Impoverished as I have been by this litigation, I may not immediately have the means of paying for the publication of such notice of them as each may deserve; but it is perfectly plain that every man in this community may be treated by them as I have been.

Reverting to Chief Justice Duval, of whose manner of dealing with the most important questions I have given a sample, I will only add that his whole allocution on that occasion, as on every occasion upon which I have been present, has been quite equal to the foregoing sample.

In open court, except at a price which no father, the sole stay of a young family, can afford to pay, it is impossible to resist judicial arrogance, to expose and punish judicial incapacity or unfitness. But I may here safely inform the Chief Justice that whether the ordinance had at any time "gone almost out of use" in France is of no kind of importance, nor is what "Domat says" on the subject worth noting, though the "*reviving*" of the ordinance *for actions such as mine* certainly militates in my favor. For the information of the Chief Justice, however, I submit that my success depended upon the fact that, on the 13th September 1759, or the day of the capitulation which followed, at the time of the

treaty by which Canada was ceded to Great Britain, the ordinance was most certainly in force. This is fully settled by the judgment pronounced by his own court in this very cause, upon the 29th of June 1865. Now, although the Chief Justice, availing himself of his position, may safely treat such a man as I am in a characteristically offensive manner, he might evince some show of respect for the tribunal of which he is the organ. Nor shall I affect to conceal my indignation and disgust that after such a decision, and after six years of litigation, after a trial by jury which lasted 24 days, after the examination of 81 witnesses and countless documents, and after from $2000 to $3000 of costs had been incurred, the Chief Justice should set about sustaining, and by such language, an imaginary demurrer, the offspring of his own brain, certainly not suggested by the able counsel who appeared at the Bar on behalf of my adversary.

Verily the death of Chief Justice Lafontaine, like that of Caligula, was followed by strange results.

A. GUGY.

Quebec, 22nd January, 1872.

P.S.—Fearing that my impecuniosity may long continue, I desire that the public will notice how continually the Judges, the very Judges, differ. Now, they can't be all right, and it seems to me that those who use *jejune* language, who can neither group the facts nor draw just conclusions, nor apply the law, are very probably persons who occupy positions for which they are not qualified. On that ground alone a little criticism, some gentle castigation, may have its use. But let the contrast be noted. A Judge by a wrong decision entails upon a family (including unborn generations) all the

horrors of destitution. But you must refrain from ascribing bad motives. You must be respectful, deferential. You must profess, indeed (to avoid evil consequences), you must profess great admiration for him, and "lick the hand that sheds your blood."

The underwritten extract from Domat may, with advantage as a test of judicial capacity, be compared with the words of the Chief Justice:—

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

N.B.—I have the audacity to express my unqualified regret that the lines which are hereinabove italicised should have escaped the acumen of the Chief Justice.

A. G.