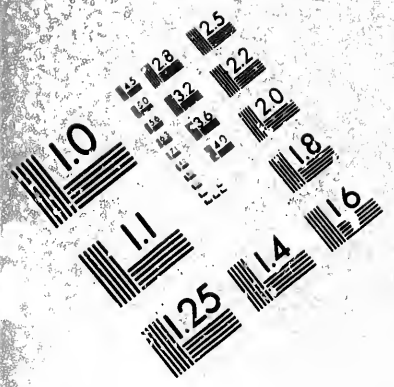

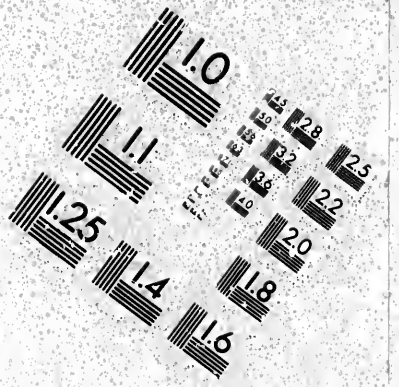

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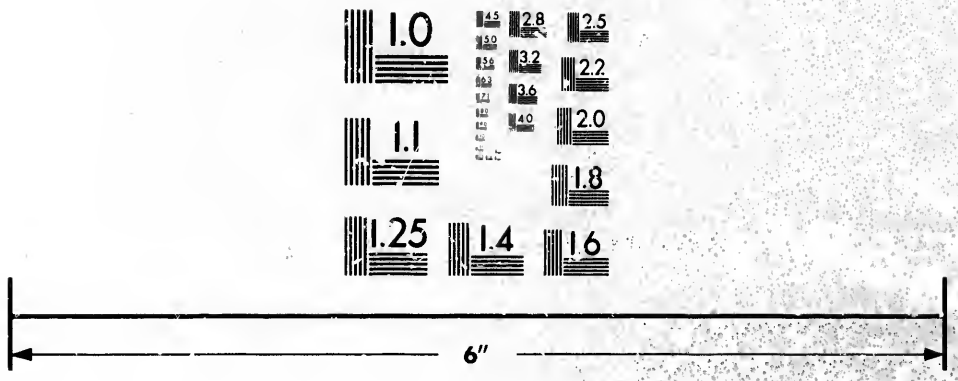

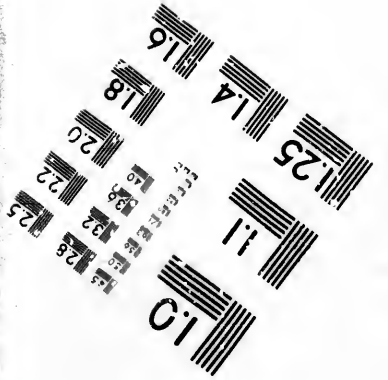

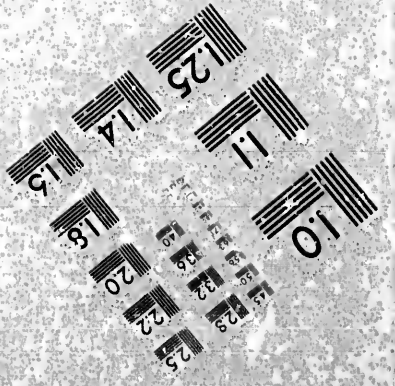

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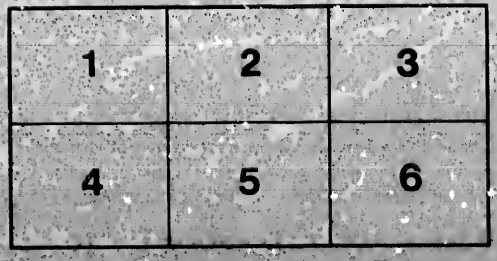

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To the Honorable the Members of the House of Commons.

THE PETITION OF BARTHOLOMEW CONRAD AUGUSTUS GUGY, OF QUEBEC, ESQUIRE;

GENTLEMEN,

Justice is the first interest of man. But Laws are mere abstractions, depending for their efficacy entirely on the character and capacity of the Judges by whom they are administered. Now as those who may be commissioned, authorized and bound to administer the laws may misbehave, may be unfit and unworthy, a tribunal for their trial and punishment has been instituted. According to the Constitution you are members of that tribunal; and it is in that capacity that you are now respectfully addressed.

During the Session many other subjects will claim your attention, and you may be more or less incapacitated from acquiring all the information that may be indispensable to the performance of the duties which the Constitution, from a due regard for the rights of your fellow-citizens, imposes on you.

The condition of our representative system too is peculiarly unfavorable to those unhappy men composing the Anglian minority in this section who may claim at your hands relief from oppression.

How—as in reference to this subject I have been frequently told,—how can the conduct of any Judge or of all the Judges in the Province of Quebec, interest any part of the population of the western extremity of the Province of Ontario, or of the opposite end of the Province of New Brunswick. The force of this observation cannot be denied; but there is a wide difference between the people and their representatives. By election the representative acquires rights, it is true; but election also imposes duties. He is thereby constituted a Judge of the Judges, and to him alone can those who are oppressed by any member of the Judiciary turn for protection and relief. No Judge can be sued for any act of commission or omission of which he may have been judicially guilty. He can only be impeached, or become the subject of a joint address of the two Houses to bring about his removal or his suspension. No member of Parliament then can turn a deaf ear to a petition against a Judge without incurring dishonor and shame. And, if, as is possible, and has occurred, a Judge should commit crimes for which a man in humble life would be, or ought to be condemned to the Penitentiary, no representative of the people can without disgrace affect indifference to the subject. It is true that he may not have an immediate, still less a personal interest in the matter, but it is as incumbent on him to facilitate an enquiry into the truth of the charge or charges preferred against a Judge as to provide for the support of his family, if he have a family. Both duties are the necessary consequences of his own acts, for in the case supposed he chose to have a family as he chose to become a representative, and as such a guardian of the rights and liberties of the people, and of all the people—as much of the people of the other sections, as of that of which he is a representative. Hoping that it is unnecessary to enlarge upon this subject to induce every representative who is a man of principle and intelligence to receive in a proper spirit any accusation which may be preferred against a Judge, I would refer to the peculiar condition of the Judiciary in the Province of Quebec. Those who peruse the newspapers published in this section, must be aware that upon this subject great dissatisfaction prevails, and that the Court of Queen's Bench [which is the Court of Appeal, and which also exercises criminal jurisdiction,] is more particularly open to objection. Without at present dwelling upon those complaints, and only instituting a comparison between the Judiciary of Ontario, who are justly held in profound respect, and that part of the Judiciary of Quebec to which I have adverted, who are execrated, I would now refer to a fact which may or may not be generally known, but which is most important. The Judiciary of Quebec possess much more power than the Judges of the other Provinces, for here trial by Jury is the exception, not the rule. In nine hundred and ninety-nine causes out of a thousand the Judges of Quebec decide *upon the fact* as well as the law, without the intervention of a Jury. It is only in commercial cases, and in cases of wrongs

susceptible of being compensated in damages that a Jury can be empanelled to try the issue joined, and then only as the result of a special application which must be made within the four days succeeding the joinder of issue.

Power, as you may have learned, has a tendency to harden the heart and to turn the head, as is witnessed more or less in Royal and aristocratic families, and the abovementioned power of deciding alone, unchecked by a Jury, upon the fate of their fellow-citizens and their families, has, to my certain knowledge, excited many of the Judges of this section to deal with suitors who are their betters in a contemptuous, arbitrary, insolent, dishonorable and brutal manner. Of course there are multitudes who, possessing neither pecuniary means, nor capacity, nor information, are unequal to the task of self-protection, and must endure oppression in silence. Nor are those who have money always able to procure professional assistance, for with few exceptions the Bar are in dread of the Bench; and it is understood that many lawyers rely for success less upon right than upon the art of pleasing by servility. If then the complaint which I am about to prefer should induce you to vote for an enquiry, and if upon investigation you should conclude not merely that I have been wronged, but should insist upon the punishment of the wrong-doer, thousands [of the poor and the friendless *especially*] will lift up their voices to Almighty God to invoke blessings on your heads. And it is undeniable that, if by God's blessing I should succeed in making but one example, more or less of general amendment will follow.

As an additional motive for extending your protection you will perhaps take into consideration the condition of this section which is inhabited by two races, speaking different languages, professing two religions, between which few or no intermarriages take place. You doubtless know, too, that the minister of the day, each of them in his turn paying his debts at the public expense, has as a matter of course rewarded his supporters by the gift of office, and the community has in consequence been frequently shocked by the appearance on the Bench of incapacity, and ignorance, and of vice arrayed in the judicial ermine.

Then, owing to the necessity for imploring the interposition of the Legislature in all cases of complaint against a Judge, the French Canadians, who in this section have a majority of four or five to one enjoy immense advantages over their fellow-citizens of the class to which I belong; and indeed in this respect it may be said that the latter labor under actual disqualification. Those who have as the French Canadians have, monopolized, in fact, all political power, can always more or less protect themselves, and in dealing with their interests all public functionaries are necessarily somewhat on their guard, for with their majority, and the sympathy which they invariably evince for each other, no French Canadian could be injured with impunity. Nor in such a case could the wrong-doer escape without being the subject of a Parliamentary enquiry. The right of the French Canadians to the enjoyment of three-fourths of the offices must be admitted, but the other fourth has hitherto been and is still monopolized by natives of Europe, who, to say the least, manifest no kind of sympathy for the natives who speak their language; and as one of this last class I take this opportunity to express my disgust, and to enter a protest against the continuance of so humiliating a condition as that to which we are reduced.

Venturing upon another preliminary observation, I would call your attention to the anomalous position of the Minister of Justice, a bitterly ironical appellation suggestive of that of "Prince of the Peace" bestowed on Don Manuel Godoy because, as the favorite of a licentious Dame, he was enabled to expose and did expose his country to war and devastation. This functionary is the bearer of some title bestowed by Royal authority, and you will perhaps here permit me to beg that you will ask yourselves whether the interests of the Dominion of Canada and those of the United Kingdom of Great Britain and Ireland are identical? If you decide, as you must, that they are widely dissimilar, then another inquiry will follow: Was this man so decorated to reward him for services performed to Canada or to the United Kingdom? If in this connection the Treaty of Washington should suggest itself, if you should admit that the verdict of the intelligent world has passed upon the manner in which our fisheries and our claims for compensation for Fenian raids have been dealt with, you will, you must, conclude that the so-called Minister of Justice has neglected the duty which he owed to Canada, and has promoted the interests of the United Kingdom at the expense of the Dominion.

And verily he has had his reward, but that is nothing new. Those among you who have read Motley will remember those offers of the highest order of nobility (*the very highest*) made by that monster Philip the Second to such of the inhabitants of Holland as would assist him in enslaving and ruining their country. Among other facts pertinent to the subject on which I have the honour to address you is the FACT, that he ennobled—that is the term used by despots—that he (after his fashion) ennobled the family of the monster who murdered William the Silent—a faultless, a godlike man, devoted to liberty, civil and religious.

Perhaps you will condescend to remember or to reflect that in this matter Sovereigns have a great advantage over nations. You probably are aware of the brilliant offers of titles and distinctions made to Franklin in England to induce him to desert the cause of his oppressed countrymen. Sovereigns always can, always do, and, whenever they have had an object in view, always have outbidden the whole population of any country; and they have been known, (as in Ireland,) to bring about the Union; they have been known to scatter titles broadcast over the whole land. And behold the battle is re-commencing, for the rage for Home rule and the Fenian and other combinations are the offspring of the Union, forced upon their country by profligate recipients of Royal favors. A people may receive inestimable benefits from an individual without deeming it necessary to offer any proof of gratitude, and even without considering any acknowledgment necessary; but a Prince by a badge, a ribbon, a title or any cheap trifle, can not only reward for past services, but ensure future devotion. And this brings me to the conclusion to which I would direct your attention. The Minister of Justice (as he is called) has received a retaining fee from the British Ministry. Though bound to do their bidding, he may be, and, indeed, appears to be perfectly indifferent to the qualifications and conduct of those to whom he assigns the important mission of administrators of the law in Quebec.

The troops have been withdrawn, all the munitions of war long since shipped from Quebec have reached British ports. Nevertheless the Ministry which announced by Governor Young its intention to relinquish Canada, but is now understood to desire its retention, need not despair, for it has not only by pre-payment secured the services of the representative of Kingston, but has at its disposal inexhaustible stores of gewgaws. Weeds will grow in all soils, so traitors and political miscreants will be found, as they have been found, in all countries; and as manure stimulates the growth of the one, so baubles excite the other; and though we know, here, that America is destined to be, from one end to the other, republican, British statesmen may imagine that by corrupting and dividing us they will have the power to prevent or retard that consummation which they so devoutly deprecate. It may occur to you, however, that not merely political contests but armed conflicts may eventually be thus engendered; and convinced that none can serve God and mammon, you may perhaps deem it expedient by resolution to expel every member who may affect to exercise any influence over the destinies of the country, after he has been retained to sacrifice them in the interest of the United Kingdom. Nor can you doubt that the Minister of Justice would be better employed in preventing or correcting abuses in his own department, than in dabbling in international complications which do not concern us.

But for the labor which, during more than twenty years, I have been obliged to devote to the preservation of my private estate, I might have continued to occupy a seat in the House in which I had been for twelve years. And I can prove, not only that I, who am a native of Canada—who have been excluded from my rightful position to make way for Europeans—have been not only oppressed by the Judiciary, but have been the victim of a kind of "*ring*" composed of old countrymen.

Those of you who are acquainted with the Revolutionary history of the United States know how much of the desire for independence was due to the insolence and rapacity of some individuals composing a part of the immigrants of that period. Bearing in mind too, the account given in Holy Writ of Ahab and Jezebel his wife, and of their coveting Naboth's vineyard, you may be disposed to admit that a similar disposition may be found amongst some of the men of our day. Now, my adversary and my neighbor, who had daily under his eyes a beautiful spot, endeared to me by its proximity to the scene of an act of heroism performed by an officer in Wolfe's army, from whom I am descended, coveted that

spot, and having, as one of his witnesses *boasted on oath*, the *honor to be an Irishman*, he might jump at the conclusion that it was too good for a mere Canadian. Now, though whether one be bitten by a dog or by a bitch the evil is much the same, it is not so in the case of an injury sustained from the malice of a private individual or of a Judge; nor is it by any means the same thing whether one be robbed by a private individual or by a Judge. The Judge, however unfit and unworthy, is so hedged in and so protected by constitutional barriers, that he cannot be reached save only through the House of Commons, and unless some member be found patriotic enough, disinterested enough, and honest and brave enough to present a Petition on my behalf I may never have any kind of reparation for the wrongs which I have suffered at the hands of some of the Judges of the Province of Quebec.

I cannot on this occasion be expected to submit a complete statement of all my grievances; but I do in the most solemn manner declare that I will offer for your consideration *nothing but fact*. On this occasion, too, I shall restrict myself to Chief Justice Duval, a Judge to whom the Minister of Justice is bound by a very strong tie.

This petition is written and dated on an estate which I hold in the Parish of Beauport, on the road to the Falls of Montmorency, about three miles from the City of Quebec. It is bounded on the West by the River Beauport. One Brown, my neighbor to the West, has a lot and a mill on the other side of the river bounded by its Western Bank.

In 1850, residing in Montreal, I received a letter from Mr. Ryland, now Registrar of that City. He then occupied my house here and intimated that my neighbor Brown was working in the River Beauport between his lot and my farm. In his testimony Mr. Ryland, referring to that subject, speaks as follows:

"During the absence of the Plaintiff Gugy, in 1850, the Defendant Brown began to "work in the river a little below the mill; he employed *a number of men*. Seeing what he "was doing and that *his intention was to turn the course of the river, to impel the current against the "eastern bank, which was and is the property of the Plaintiff*, I remonstrated with the Defendant "on the subject, and wrote to the Plaintiff to warn him. This was in the year 1850. "Brown, losing no time, erected the wharf which is still on the spot between the stone "store and the wooden store. It was an encroachment on the river, and greatly injured "Gugy. No calculation of the loss could be made beforehand, and Gugy could not "then resort to the law, for it is too slow a remedy. In order to make my evidence clear I "would remark that the lower end of the wharf in question, as it originally stood before "Brown became possessed of the property, sloped slightly inwards towards the south-"west bank, drawing the water in the same direction, against a bank of hard material. In "re-constructing the wharf Brown pushed the lower end of the wharf outwards into "the stream, thus forcing it upon the Gugy property, which, being composed of alluvial "soil, was greatly damaged."

Finding, in 1852, that, as Mr. Ryland had foreseen and predicted, the wharf built two years previously by Brown had carried away and was carrying away my ground, and having no manner of confidence in those who administered the law, I resolved to erect, and at considerable expense did erect *on my own land, within my own well-recognized boundary, a protective* or *defensive* wharf.

Such persons as may be desirous of testing my veracity are earnestly requested to note the foregoing twelve words in italics.

The wharf being finished, that is to say, on the 29th of October, 1852, I was served with proces at the suit of my neighbor, Brown. The offence imputed to me was described in the following language:

"Yet well knowing the premises aforesaid" (namely the right which Brown alleged that he had to use the river), "but contriving, and wrongfully and unjustly intending to "injure and prejudice the Plaintiff Brown in this respect, and to deprive him (Brown) of the "use, benefit and advantage of working his said mill, as he had heretofore done, and of right "ought to have done, and to injure him in his trade and business as a miller and trader, "which he has carried on at the said mill for the period of seven years aforesaid, and still "doth exercise and carry on at the said mill, to wit, on or about the *sixteenth day of October*

"*instant*, and on divers other days and times *between* that day and the issuing of the summons "in this cause against the said Defendant Gugy, did erect, or cause to be erected below and "lower down the said river than the said lot of land, buildings, mill, and premises, and in "and upon the said River Beauport, a certain wharf which nearly traverses the whole of "the said river, at a distance of one or two acres or thereabouts, below the said flour mill, and "which said wharf materially alters the natural course of the said river, and narrows the "channel of the same so much that it is now quite impossible for the said Plaintiff to float "bateaux and other vessels from the said river St. Lawrence to the said mills, as he was "accustomed and used to do before the erection of the said wharf; and he, the said Defend-"ant, hath by means of the said wharf prevented the waters of the said river from running "down the natural channel of the said river, and confines the said channel to so small a "breadth, that whenever the waters of the said river, from freshets or otherwise, become "high, the said waters recede or are thrown back upon the said mill and property of the said "Plaintiff, whereby, and by reason of the still water thereby occasioned, the said mill cannot "be turned or worked.

"That in consequence of the illegal and tortious acts committed by the said Defendant, "in so causing to be erected the said wharf, as aforesaid, the said Plaintiff has been, and is "still, prevented from using the waters of the said river, and cannot work his said mill as "heretofore, which he otherwise might and would have done, by carrying on his trade and "business therein, to wit, at the Parish of Beauport aforesaid, to the damage of the said "Plaintiff of the sum of three hundred pounds, lawful current money of this Province."

Your attention is earnestly called to the foregoing extracts from the declaration, which extracts describe the injury of which the Plaintiff Brown then complained, and the remedy which he sought. Hoping that you will agree with me, I venture to say that the complaint was restricted *in point of time* to the *thirteen days preceding the service upon me* of the *writs;* nor in the allegations is one word to be found implying that the then Plaintiff Brown complained also of *probable future injury*, or that he demanded to be *secured against its occurrence*.

On being served with process, I retained Messrs. Holt & Irvine. They appeared as my Attorneys and filed a plea on my behalf. I was thereby made to allege in substance that the previous erection by the then Plaintiff Brown of a wharf which encroached upon the channel and injured me, had compelled me to avail myself of my right as Riparian proprietor, and to build upon my own ground a wharf for my protection.

On this plea issue was joined. According to the course pursued in this Province I was engaged in what is called the enquête, that is to say the examination of witnesses, from about the beginning of the year 1853 to the autumn of 1859. In the course of that time eighty-nine witnesses were examined, some of them at great length; for instance, as much as four consecutive days were devoted to the examination of a single witness. During the progress of the suit Messrs. Andrews & Campbell were substituted as my Attorneys to Messrs. Holt & Irvine, and eventually Mr. Thornton Smith replaced Messrs. Andrews & Campbell.

It is thus a fact that you are most earnestly requested to notice, that I was in that *suit* represented by five different Attorneys of Record,—*no less than five!*

The suit lasted upwards of twelve years. It was decided in my favor in the Court of first instance. My adversary then appealed to the provincial Court of Queen's Bench, in which for the second time he failed. It is on this judgment more particularly, as offering abundant proof of the malice and gross misconduct of Mr. Justice Duval (then only a Puisné Judge) that I propose at present to dwell.

During the pendency of this suit, however, my adversary being very wealthy, could afford to bring, namely on 9th January, 1854, another suit for the same—the very same cause of action, under the No. 183. Then, namely, on 30th October, 1855, he brought a third suit under the No. 325, founded, like the two first, on our vicinity to the River Beauport; and eventually, namely, a fourth suit under the No. 581, *exactly for the same cause of action* as the causes respectively numbered 533 and 183! He failed in all these suits in all the Canadian Courts, but I was obliged to be present in court daily, and in truth was detained here a sort of prisoner until their termination.

Then in the cause numbered 533, having been cast in the Courts here, my adversary appealed to Her Majesty the Queen in Her Privy Council. This compelled me to resort to that Court, and in order to defend myself to cross the ocean six times. But in another cause he obtained against me a judgment in the Court of Appeal, with a copy of which, a (sample of the doings of that Court, and a prodigious absurdity) I shall close this paper, that also compelled me to repair to the Court of Her Majesty the Queen, held by the Judicial Committee at Whitehall, in London. Thus at my own expense, without receiving one fraction of compensation, either as fees, or in any other shape, I crossed the ocean eight times, and maintained myself in England at great cost, altogether because there were in this section of the Dominion Judges of the stamp of Mr. Justice Duval.

Reverting now to that part of his conduct which affects me, I submit a true copy of the judgment of the Court of Queen's Bench (Appeal side,) which is more particularly the cause of my complaint, dated 7th May, 1861.

"Seeing that in the judgment of dismissal of the action of the Appellant (Brown) 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 judg- "ment rendered in the Superior Court sitting at Quebec, on the first day of February, one "thousand eight hundred and sixty, be, and the same is hereby 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 Respondent Gugy, by reason of his being a practising "attorney, and of his having personally conducted his own defence.*"

As is usual in our Court of Appeal, the Judges by whom the foregoing Judgment was pronounced were not unanimous.

Three,—that is to say, Chief Justice Lafontaine, Mr. Justice Meredith and Mr. Justice Mondelet, composing a majority, were agreed on confirming the judgment of the Court below, dismissing the action of my adversary, Brown.

The two others, Alywin and Duval, were for reversing it.

Three, Lafontaine, Aylwin and Duval were for refusing fees to the Respondent Gugy.

Fees, as has been seen, were accordingly refused; and were so refused because I had committed the crime of defending myself, when, as the judgments of the Canadian Courts proved I had been unjustly and unfairly attacked.

This is a proof of the capacity, of the logic, of the fitness for their position of those Judges; but two of them (Lafontaine and Aylwin) having gone to their account, I can on this occasion complain only of Mr. Justice Duval.

Regarding Mr. Justice Alywin, I shall make no remark, which is all that can be expected of me; but the memory of Mr. Chief Justice Lafontaine, a respectable, well-meaning man, deserves that a fact which is favourable to him, and which is recorded in the XIth Volume, Lower Canada Reports, page 407, should be noticed.

Those who have noted my affirmation, and can, if they see fit, verify the fact, that I had been represented in the Court below by *no less than five* different Attorneys, will have doubted the evidence of their senses, or possibly my veracity, when they read in the concluding lines of the foregoing copy of judgment the order withholding (or as Judge Duval will be found to have said, *refusing* fees) to me in *both Courts* by reason that *I had conducted my own defence*. This amounts to an assertion on the part of Judge Duval that I had not only appeared in person in the Court of Appeal, but had conducted my own defence in the Court of first instance, or Superior Court, and yet this was and is a direct, an absolute, and no doubt an intentional falsehood.

Chief Justice Lafontaine would at first sight appear to have been a particeps criminis, but he did not,—as I gather,—he did not intend to commit so dishonoring an offence. As was his habit he delivered the judgment of the Court in French; and in the report of the case to which I have referred it will be found, that he not only declared that I was entitled to fees in the Court of first instance (the Superior Court) but he assigned the reason, namely that I *had appeared* in *that Court by Attorney!* Hoping that many men whose mother tongue is English, and who may have little or no knowledge of French will have enough of patriotism

or of charity to read these lines, I submit a copy and a translation of the very words used by him.

Text.

"Notre jugement reconnait 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*, parcequ'ici, ayant "comparu lui-même, il n'a comparu et n'a pu "comparaître que comme partie. Le juge- "ment est rédigé de manière à établir une "regle 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."

Translation.

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.

Writing for Legislators, for men who must be presumed to be intelligent, educated and conscientious, for men who must feel that the destinies of Canada, and the weal or woe, not only of the millions now living, but of unborn generations, depend upon their disposition to acquit themselves becomingly of the mission with which they are charged, I make no comment. But the discrepancy between the words of Chief Justice Lafontaine, between the description of the judgment which he had resolved to give, and *which he evidently imagined that he was giving*, and the judgment as it is recorded, suggests a question, affecting the character of the Court, and the confidence to be reposed in its acts and records.

The judgment has evidently been manipulated; it has been made to state as a fact that which on the authority of Chief Justice Lafontaine must be held to be and is an intentional falsehood. And the Judgment, as recorded, gives him the lie. Now, Mr. Chief Justice Duval, you are the only man living who can explain that discrepancy. Do so if you can. It concerns not only the Court of which you are now the organ, but you yourself, and the community is interested in obtaining from you such an account as you can give.

But there are many other statements made by Chief Justice Duval to which it behoves me to call the attention of Honorable Gentlemen who have in their hands the fate of the country. Thus, on the 1st February, 1861, the day upon which the abovementioned judgment, denying me fees, was pronounced, he, being then a Puisné Judge, was silent, or intimated only that he dissented. The Appellant, Brown, however, was induced, as it has since appeared in consequence of that dissent, to appeal from that decision to Her Majesty the Queen in Her Privy Council. In all such cases, the Judges who have assigned reasons for their decision are held to deliver a copy or a note of those reasons to the Registrar of their Court, that those reasons being by him transmitted with the record to the Lords Justices composing the Judicial Committee, may facilitate the performance of the task devolving on them.

Adhering strictly to facts, and leaving all inferences to the intelligent reader who may take an interest in the subject, I would here state that on the 8th January, 1862, eight months after the date of the judgment, Mr. George Cary, a printer, of Quebec, was required to print, and did print five pages of foolscap, entitled as follows:—

BEFORE THE PRIVY COUNCIL:

JUDGE DUVAL'S
OPINION,
IN A CAUSE BETWEEN
WILLIAM BROWN,
Appellant,
AND
BARTHOLOMEW CONRAD AUGUSTUS GUGY,
Respondent.

This "*opinion*" as it was styled here, did not find favor with the Judicial Committee. On the contrary, their Lordships thought fit to describe it as "long and very elaborate arguments, supported by a citation of numerous authorities against the decision of the majority "of the Court."

Being informed "that these arguments were not delivered by (Judge Duval) the dissenting Judge at the hearing of the cause, but were first made known by being printed "as part of the record before their Lordships, they said that the course so pursued appeared "to them to be open to great objections." Their Lordships thought too, that Judge Duval's "reasons for dissenting from his colleagues should have been stated publicly at the hearing "below and should not have been reserved to influence the decision in the Court of Appeal."*

Refraining from the use of epithets, I propose now to deal with a few of the statements and some of the reasoning which Chief Justice Duval has caused to be recorded in print as his opinion.

1st. 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."

This declaration however was filed not only in the Superior Court, but in the Court of Queen's Bench Appeal side, of which he was then and is still a Judge, and he might have had it before him if he chose to read it; he perhaps did read it, for he cites the "explanations" contained in it, which from his language would appear to have proved to his satisfaction, both that my wharf was built in the River Beauport and that it caused Brown *very great damage.*

The words "erected in the River Beauport" amount to a petitio principii to which I shall advert. I must however in the first place deal with the words "causing Brown very great damage" merely noting that the superlative "very" is an addition or improvement of His Honor. I would, however, at once cite the Plaintiff Brown's own estimate of the damage, as set forth or "explained *in his declaration fyled in the Superior Court.* It is £300.

But the Lords Justices have authoritatively declared in terms "that the Respondent "Brown had failed to prove any damage sustained by him from the works of the now "Respondent Gugy, before the commencement of the action."

This was the finding of the two Canadian Courts and their Lordships declared that the "propriety of this finding was hardly disputed at their Bar, and that indeed it did not admit "of dispute."

If their Lordships are to be believed this disposes of the *very* great damage invented or imagined by Judge Duval, and proves how insufficient, honorable, unprejudiced and enlightened gentlemen considered the *explanations* contained in the declaration.

On this point Chief Justice Lafontaine in his written judgment testifies as follows:

Text.	*Translation.*
"Il est évident.....que le Demandeur	"It is evident that the Plaintiff (Brown)
"n'avait pas encore éprouvé des dommages"	"had not when he returned his action suffered
"(de la construction du quai du Défendeur)	"any damage from the construction of the
"lorsqu'il introduisit son action. Nulle preuve	"wharf of the Defendent Gugy. No proof to
"n'a été faite à cet égard, même plus il a été	"that effect was offered, what is more it was
"admis de la part du Demandeur (Brown)	"on the part of the Plaintiff (Brown) *admitted*
"lors de la plaidoirie à l'audience qu'en effet	"*during the argument at the hearing in open*
"il n'y avait pas eu de dommage appre-	"*Court* that there had not been any appre-
"ciable."	"ciable damage."

In England I had the signal honor to be opposed by Sir Roundell Palmer, then Attorney General, and now Lord Chancellor, whose authority as Counsel for my adversary, Brown, certainly adds great weight to the declarations of the Lords Justices. Though Judge Duval was convinced by "the explanation of the declaration," those conscientious gentlemen all declared that no damage had been sustained by Brown. This event, being posterior to the assumption of Judge Duval, that my wharf was erected in the River Beauport and had caused Brown "*very* great damage" may be only a proof of a difference of opinion. I know too much of Judge Duval to doubt that he persists, and ever will persist in his above-mentioned opinion or assumption. All that can be said on this difference of opinion is that there are on my side the Lords Justices, three, and two Counsel instructed by the Appellant

* As Judge Aylwin had pursued the same objectionable course, their Lordships spoke in the plural.

Brown and his three solicitors making eight and three Judges and one Counsel here, making twelve, and on my adversary's side Judge Duval alone.

But the solemn affirmation of Chief Justice Lafontaine involves a question of principle. When Brown's Counsel made the memorable declaration, that my wharf had caused no appreciable damage, which declaration Chief Justice Lafontaine and I, being perfectly sober, recorded, Judge Duval was seated on the same bench next to the Chief Justice.

Did he not hear the learned Counsel, or, hearing, did he disbelieve?

And if he did not hear, why did he not hear? Or if he did not believe, why did he not believe? How was he engaged, what was the condition of his mind on that occasion?

One fact, however, one undeniable plain fact, however, which he cannot deny, is that Chief Justice Lafontaine at his presence read in a perfectly audible tone, the abovementioned declaration made by Brown's Counsel.

Why did not Judge Duval then contradict or undeceive his Chief, why did he reserve a statement which gives the lie to his Chief for a period so long subsequent to the event? Here, Gentlemen, Members of the Legislature, drawing the curtain and laying open to you our Court of Queen's Bench, I direct your attention to the evident utter unfitness of its Chief. I am impelled to the act by the fact, that the hearing, at which that declaration of Brown's Counsel was made in open Court, *preceded* Judge Duval's written affirmation that Brown had sustained *very great damage* by fourteen months. Then the written Judgment of Chief Justice Lafontaine was audibly pronounced eleven months before Judge Duval had the courage to write and print his opinion. Now the sentence herein above quoted, recording *the admission of Brown's Counsel*, reported as I have said in the XIth volume Lower Canada Reports, page 402, (*last three lines*), formed a part, and of course, a prominent and most interesting part of the so audibly read Judgment of Chief Justice Lafontaine.

Of course it will or may be said that Judge Duval is entitled to his opinion, but unless he chose to brand the Counsel as a guilty wretch who had betrayed his Client, he could not entertain the opinion, which he professes to have held, nor, as he proposed to assign the grounds of his opinion ought he to have overlooked that admission, or omitted to neutralize it, or to have pinned his faith upon the "*explanations*" in the declaration, which every lawyer knows was talking nonsense, sheer nonsense.

You now know how Judge Duval the [present] Chief Justice of our Supreme Court, can deal with the facts of a case, and may, probably, pardon me for exhibiting him as a lawyer.

Please then to note that the fourth paragraph of his opinion is as follows:

"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 Appellant had sustained no pecuniary loss when he instituted his action."

Such of you as expect some little show of reason and consistency in the statements of Judicial personages, will have probably compared the words "*assuming the facts he alleges to be true*" with the declaration of the Lords Justices, of Chief Justice Lafontaine, and of Brown's own Counsel. But why should Judge Duval assume that the *facts* [as he writes] were true? Facts are always true, and if he meant *statements* he should not have written the word facts. But I repeat, why should he "assume" anything after he had in the *very first* paragraph decided the question of very great damage on the faith of the "*explanations*" in the declaration.—But again, according to Judge Duval's first paragraph Brown had sustained *very* great damage. Then why should he in the fourth, use the words, "even *admitting that Brown had sustained no pecuniary loss when he instituted his action.*" He must be very deficient, indeed, if he could not see that this admission implies the very reverse of what he had affirmed in his first paragraph. But as to the question of law he proceeds as follows:

"Troplong, who has written most ably on the subject in his Traité de la Prescription, "Vol. 1, No. 313, says:

Text.	*Translation.*
"Ce n'est pas contre un dommage causé "qu'on voulait se prévenir mais contre un "danger ou un tort à venir."	It is not to obtain compensation for an injury, which has been sustained that the action is brought, but to secure protection against a future danger or a wrong to come.

"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, and sec. To this may be added the opinions of Garnier, Grenier, and Proudhon."

The reader will please to remember that all these authors agree in the doctrine above stated, and will, I hope, by reference to the extract of Brown's declaration herein-above set forth, ascertain that he complained only of a past wrong, without referring by a single phrase to any other or future eventualities. *These authorities then do not apply to this case*, but *These* words are followed by a characteristic proof of Judge Duval's confidence in himself, contained in the first line of the sixth paragraph, which begins as follows:

"*The Appellant* [*Brown's*] *right of action being established.*"

Accustomed to dogmatize from the elevated position which he occupies in Court, and to speak ex cathedra where none dare contradict, he has had the vanity to think, and the courage to affirm, that he had in the fifth paragraph *established or demonstrated Brown's right of action.*

The Lords Justices of the Judicial Committee of the Privy Council have, however, taken the liberty to contradict him, and though of course I dare not affect to differ from a Chief Justice, I may venture to cite the adverse opinion of his superiors.

It has been seen that Judge Duval held the plaintiff Brown to have instituted an action "not to obtain compensation for an injury which he had then sustained, but to secure protection against a future danger or a wrong to come."

This is in his view the question, this is the "*doctrine*" which establishes the right of action, and to which the authorities he has cited apply.

Had he been at first of that opinion he would not have taken the pains to quote the "explanations" in Brown's declaration, nor could he consistently have adverted to the very great damage which Brown had previously sustained. According to the doctrine cited from Troplong, Garnier, Grenier, Daviel, Merlin and Proudhon, that course, though indicative of great industry, of prodigious research and of profound thought, was absolutely unnecessary. It is indeed not only on that account that one is led to regret his having taken all that trouble, for looking "on this picture" as he has drawn it in the fifth paragraph now under consideration, and "on that," as he drew it in the first paragraph, it is altogether impossible to resist the intrusion of a thought, which necessarily takes the form of a question, did he ever read the declaration?

In the second paragraph, the action of which he so confidently speaks as the action brought by Brown is said to be "*an action well known to our law* by the name of *Dénonciation de nouvel œuvre* taken from the Roman law."

These are his words, and my readers being requested to bear in mind the foregoing extracts from the fourth, fifth and sixth paragraphs of Judge Duval's opinion, will now learn on the authority of the Lords Justices that Judge Duval REALLY DID NOT KNOW WHAT WAS THE NATURE OF THE ACTION upon which he had presumed to adjudicate. I do not assert that he has deceived me or any body else, but if the Lords Justices can be believed he himself from first to last was in a state of conglomeration.

"It was said (the Lords Justices declared) it was said, however, and this is the point "relied on by the dissenting judges, namely, Judges Aylwin and Duval, that it was unnecessary for the Plaintiff in the action to prove actual damage; that the action might be maintained as one of *dénonciation de nouvel œuvre*, and that in such an action it is sufficient to "prove that the work complained of will, or probably may, be attended with injury to the "Plaintiff."

"But the action of *dénonciation de nouvel œuvre* is of A DIFFERENT DESCRIPTION FROM THE "PRESENT, is founded upon a *different state of circumstances, and seeks different relief.* In such "an action the Plaintiff claims protection against a work commenced, and still in progress, "by which, if completed, he alleges that he will be injured.*

*I disavow any intention of speaking contemptuously of Troplong, Garnier, Grenier, Daviel, Merlin or Proudhon, and I venture to express a hope that I understand those authors. I would add that though not bound to be proficient in English law, those authors I *suppose* point to the remedy afforded in England by injunction.

"If such an action be brought it appears that the Judge may either interdict the further "progress of the work or require security to be given by the Defendant to the Plaintiff "against any injury which he may sustain; but when *the work is completed this form of action "is no longer competent.*"

"This appears to have been the law of Rome. In the Dig. Lib. XLIII. tit. 15, 'De "Ripa munienda,' after a statement that any protection to the banks of a public river must "be made in such a manner as not to hinder navigation, so that any person who apprehends "injury from the work may apply to the Prætor for an interdict to restrain it, and may obtain "security, we find this passage:—'5 Etenim curandum fuit ut eis ante opus factum cavere-"tur. Nam post opus factum persequendi hoc interdicto, nulla facultas superest etiam si "quid damni postea datum fuerit, sed Lege Aquilia experiendum est.'

"The law and form of procedure of Rome seem in this respect to have been adopted "into the law of France.

"In Daviel, 'Cours d'Eau,' tit. 'Du Domaine Public,' part 471, it is distinctly laid "down that by the old French Law, that is, by the law now prevailing in Lower Canada, *the "dénonciation de nouvel œuvre* could only be maintained if instituted *before the work was com-"pleted*, though by an alteration introduced by the French Code, the law in this respect is "now altered, and the action may be maintained in respect of a work either 'fait ou com-"mencé.'"

The author says:—

"Je dis nouvel œuvre fait ou commencé. "Sous l'ancienne jurisprudence la dénoncia-"tion n'était plus recevable du moment que "le nouvel œuvre était terminé; c'est ce que "cette action avait de special comme aussi la "faculté pour l'auteur du nouvel œuvre de "continuer son travail en donnant caution et "la restriction du droit du Juge à suspendre "les travaux sans pouvoir les faire detruire. "Mais sous notre nouveau droit la dénoncia-"tion de nouvel œuvre est assimilée aux "autres actions possessoires, par cela que les "lois n'ont pas reproduit les conditions "particulières qui la caracterisaient autre-"fois."

Nouvel œuvre (new work) finished or begun. Under the old jurisprudence the denunciation was not admitted after the new work had been completed. This was what was peculiar to this action as was also the faculty allowed to the author of the new work to continue his work, provided he gave security, and then limiting the authority of the Judge to ordering the suspension of the work without exercising the power of causing it to be removed or destroyed. But according to our new system '(introduced in France since the Revolution by the code Napoleon) this action is assimilated to the other possessory actions in this that the modern law has not reproduced the particular conditions which formerly characterized it.'*

"In this case there is no doubt that the work was completed before the action was "commenced, and the relief sought is different from that which, according to Daviel, could "be granted in an action of *dénonciation de nouvel œuvre*. But even if the present suit "could be regarded as an action of this description, it would be equally met by the objection "that the Plaintiff had failed to prove that the work would be injurious to him."

My intention being avowedly to cause the immediate removal from the Bench of Judge Duval, I proceed to prove by his words and deeds his incapacity and unworthiness.

In the sixth and seventh paragraphs he declares that "he finds it impossible to entertain "the slightest doubt that the Respondent (Gugy) erected a wharf in the River Beauport, "and that it causes the Appellant (Brown) the damage he complains of."

In page 404 of the abovementioned volume of L. C. Reports (10th and following lines) Chief Justice Lafontaine is made to use the following words: "Il est etabli que la quai de 1852 "(the wharf in question) a été construit en entier sur le terrain du Défendeur." "It is proved

* Should these remarks meet the eye of any lawyer of average ability he will at once perceive that there was and is a considerable difference between the modern law of France and the old law of France, and that in the Province of Quebec the modern law has *not been introduced*. Chief Justice Duval writes as if he were ignorant of this fact, and cites modern authors who comment on the modern law, not on the old! It will also strike such a lawyer that had a manifest interest in insisting upon this difference in the systems of the two countries, for had my adversary proceeded, (which he did not), as Judge Duval assumed, for protection from a probable future damage, I should at once have offered security, and thus been spared twenty years of suffering!

" that the wharf of 1852 was built altogether on the property of the Defendant (Gugy)." Had the Lords Justices been of a different opinion they must have reversed the judgment.

Three experts also reported to the same effect.

But such honorable and patriotic men as may deem it to be their duty to contribute to the purification of the administration of the law will be moved less by the antagonism existing between Judge Duval and other authorities than by his inability to account rationally for *his* entertaining not *the slightest doubt !*

"Schooners," he assures Her Majesty the Queen in Her Privy Council, "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. It is doubtful if a skiff of the very smallest size, could at this day be brought to "the mill."

This last assertion incautiously hazarded is contradicted by the plans, which show in the narrowest part of the river, a breadth of twenty feet.

On this occasion, however, I can neither exhibit the plans, nor a skiff of the smallest size, but I can analyze the evidence of Lambly. Premising that I do not at all impeach his character, I submit the following extracts from his testimony:

Thus, in June, '55, he says: "I shall be eighty-four 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 almost every year when I was Harbor "Master, without, *however, 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."

To confirm the impression which I hope I have made, that Lambly's memory was so defective that he could not be relied upon, I would extract from his testimony a few more words. Speaking of me (Gugy) Lambly says: "I have known the Defendant from about "the year 1811 (*eleven,*) for I was appointed Harbor Master about that time, and I used to go "into Court frequently *where the Defendant was practising.*" This affirmation that I was practising in eighteen hundred and eleven would have staggered any intelligent honorable man in the position of Judge Duval—for we were fellow-students in the same office in 1821, and as a Judge he was bound to know the date of my admission, which was in 1822.

I would now revert to Judge Duval's unqualified affirmation "that schooners have sailed "up as far as the mill;" and he adds, "the evidence of the Harbor Master Lambly, intimately "acquainted with the locality, leaves no doubt on the subject."

Now, in the first place Lambly cannot be acquainted with the locality, for he never was up as high as the mill, *nor did he ever,* according to his own account, *see any schooner sail up.* The words on which Judge Duval relies are the following, "The River Beauport is a small "river, but is navigable at high water to *near* the mill for *bateaux,* small schooners and so "forth." He had previously said, "'the river' is little more than 'a creek.' I consider all "rivers creeks which are dry at low water." He added, "I have not seen the premises in "question since the year 1841, at which period there were no wharves."

Now, Judge Duval, guided, or affecting to be guided, by this testimony, affirms that schooners have sailed up (not near to the mill) but *as far* as the mill, and he overlooks the qualifying adjective *small,* which, coming after the word bateaux, indicates a diminutive kind of craft, nor does Judge Duval limit the period of sailing up to the time at which the water was high.

But, conscious that something was wanting, he has the effrontery to pretend "that the "plans clearly show the encroachments of the Respondent (Gugy) on the very bed of the "river, and the latter's utter disregard of the rights of others." Until those encroachments are removed, "he asks how is Brown to get grain to his mill, or to send his flour to market."

All Judges are bound to be guided by the evidence, and the gentlemen whom I have the honor to address will be surprised to learn, on the authority of the Lords Justices, that "the particular portion of the river where the channel *is said* to have been contracted does "not appear to have been actually in use for the purposes of navigation."

Chief Justice Lafontaine too, in his written judgment, referring to this subject in open Court, publicly and audibly read the following words: "Brown na pas même prouvé qu'il ait "jamais conduit un bateau a son moulin pour y charger des farines ou des grains." "Brown "has not even proved that he ever took a boat up to his mill either to load or to unload "flour or grain." But Brown had alleged it, and though it was so interesting a fact that the absence of proof amounted to evidence, that the allegation was unfounded, Judge Duval chose to assume the responsibility of asserting it to be true, and not only in the absence of evidence but in the teeth of the written affirmation of his Chief to maintain that schooners had sailed up as high as the mill.

Nor was he satisfied with that most reprehensible mode of dealing with the subject, but in the 13th paragraph he rancorously taxes the Respondent (Gugy) "with the commission "of an act done in open violation of the laws of the land, and of neighbors' rights;" and he stigmatizes the allegation that I had erected my *wharf* to protect myself against the works of the Appellant Brown as "a *clumsy attempt to justify the commission of that act.*"

But Judge Duval did not stop there, and he succeeded in depriving me the successful suitor, the Respondent, of a sum of about $160. He effected it, as he himself says, "by "refusing fees of office to the Respondent, who appeared in person and conducted his own "case."

"This (he adds) is in conformity with the Jurisprudence in France."

Upon the authority of the Lords Justices I flatly contradict Judge Duval. Being a Judge he could rob me of my fees, but he cannot impose upon my reason, nor can he deprive me of the advantage of the information which it has pleased God that I should possess. It is not much, perhaps; but although he has been so much more successful than I, (I know and could assign the causes of his success) that information so far as it applies to this case is evidently more than he can fairly lay claim to, and he seems to rely upon audacity to terrify or cajole a timid, divided population, in which no public opinion has as yet developed itself.

Inasmuch, however, as it is true that Her Majesty the Queen in Her Privy Council did not reverse the Judgment denying me fees, and did not decide that I was entitled to fees, *until after* Judge Duval had confidently, (let me add, exultingly) exclaimed: "This (his denial of "fees) *is in conformity with the Jurisprudence in France!*" it might be urged on his behalf that *he could not foresee* that decision. Prepared for his affecting to rely on that pretext, I hereinunder subjoin some conclusive authorities on the subject, from the year 1324 to 1779.

Text.

"La pratique judiciaire, reçue et observée "par tout le royaume de France, de Mr. "Imbert, illustrée et enrichie de plusieurs "doctes commentaires, interprétations, an-"notations extraictes des Docteurs, Pratl-"ciens, Edicts, Ordonnances, et Arrests des "Cours des Parlements—par M. Pierre "Guenois, conseiller du Roi, et M. Bernard "Automne, Advocat au Parlement—Paris, "Edition 1623.

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

Translation.

The practice received and observed in the whole Kingdom of France by Mr. Imbert, illustrated and enriched by several learned commentaries, interpretations and annotations, extracted from Doctors, Practitioners, Edicts, Ordinances and Judgments of the Courts, by Pierre Guenois, Crown Counsel, and M. Bernard Automne, Advocate, Paris Edition, 1623, page 334.

Of the condemnation to costs, the taxation and liquidation thereof.

"The Judge in every judgment must con-"demn him who has lost his cause to pay

" la gagne ès despens.....comme il est dit " par l'Ordonnance 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 " de l'Ordonnance de 1493, et de celle de " Charles VIII, récitée 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 succombe " ne soit condamnée aux dépens."

Text.

Conférence de Bornier, Tome Ier, Edition, 1729, *Titre XXXI, Des dépens.*

" Il faut encore observer, que quoique la " partie ait omis de demander la condamna- " tion 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 qui si on " les avait demandez. La raison est, parce " qu'en matière de contrats et sentences on " supplée aux choses, *de quibis verisimile est* " *partes cogitasse. Gloss, in l.* 3. § *si rem, verbo* " *Fortassis, de leg.* 3. *Anfrer. decis.* 5. *Mattesil.* " *Singul.* 81. *Rebuf. trait. de expens. art.* 2. " *Gl. un. num.* 49. *Boer. decis.* 18 *G. P. qu.* 55. " *de 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."

Text.

Code Civil on (Commentaire *sur l'Ordonnance de* 1667. par M. Serpillon, Conseiller Civil, etc.) Titre 31e (Des dépens.) Edition of 1776.

" Toute partie soit principale ou interve- " nante, qui succombera même à un renvoi " déclinatoire, évocations ou règlement de " juges sera condamnée aux dépens indéfini- " ment, nonobstant la proximité ou autres " qualités des parties, sans que sous prétexte " d'équité, partage d'avis, ou quelque autre " cause que ce soit, elle en puisse être " déchargée; Défendons, à nos cours de Par- " lement, Grand Conseil, cours des aides et " autres, nos cours, Requêtes de notre Hôtel " et de Palais et à tous autres Juges, de pro- " noncer par hors de cour sans dépens, Vou- " lons qu'ils soient taxés en vertu de notre " présente ordonnance au profit de celui qui " aura obtenu définitivement, encore qu'ils " n'eussent été adjugés, sans qu'ils puissent " être modérés, liquidés ni réservés.

" Quoiqu'une partie ait fait elle-même les " écritures de son procès, les dépens ne lui " en sont pas moins dûs, parce qu'il ne serait " pas juste que la partie qui a succombé, " profitat de son travail. D'ailleurs, celui " costs to him who has gained it, as is said " by the ordinance of the King Charles VIII, " Article 50.

" The ordinance of King Charles IV, 1324, " orders that he who fails in a cause must be " condemned to pay costs to the adverse " party. It is gathered from the ordinance of " 1493, and from that of Charles VIII quoted " in the text of our author, that whatever be " the cause, and even though it be just and " reasonable, the party who fails cannot be " exempted from a condemnation to pay " costs."

Translation.

Bornier, first volume, Edition 1729, title XXXI of the costs.

It is moreover to be observed that although a suitor should have omitted to demand a condemnation in costs against his adversary, that omission does not vitiate the judgment, and does not exempt the party which fails from being condemned to pay costs, precisely as if they had been demanded. The reason is that in contracts and judgments the things are necessarily supplemented, de quibus verissimile est partes cogitasse, Gloss in L. 3 si rem verbo, Fortassis de leg. 3, Anfrer. decis 5, Mattesil singul 81, Rebuff. trait. de Expens. Art. 2 Gl. un num 49, Boer decis. 18.

This condemnation was so indispensable that if the judge had not adjudicated upon the costs, *he was obliged to pay them in his own proper name* to him who by his judgment had gained the cause.

Translation.

Ordinance of 1667, title 31st of the costs, Edition of 1776, with commentary by Serpillon, Judge of the Civil Chamber of the Council. Every suitor, whether an original party to the suit or an intervenant, who shall fail even in a matter of form, shall be condemned to pay costs indefinitely, although the parties should be closely related, nor shall the party failing be discharged from the payment of costs under pretext of equity, difference of opinion among the judges, or for any other cause whatsoever, and we do hereby prohibit any of our judges of any of our Courts from pronouncing any decision whereby any party may be exempted from the payment of costs. And we hereby direct that the costs be taxed in virtue of our present ordinance, although they may not have been adjudged, and we further order that they be not moderated, diminished or reserved.

Although, one of the *parties should have himself done the writing requisite for his suit the costs are not less due to him, because it would not be just that the party which has failed should profit by the work of the other. It is clear that he who has succeeded in the cause*

" qui a obtenu gain de cause aurait pu em-
" ployer son temps pour d'autres et faire le
" même profit dont il serait privé, s'il ne
" pouvait exiger ses vacations."

Text.

Procédure Civil du Chatelet. Paris, Edition of 1779, de l'Instruction, liv. II. partie II. par Mr. 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."

Text.

Le nouveau Practicien Français, par M. René Gastier, procureur en la cour du Parlement de Paris, Edition de 1665.

" Maximes établis par les lois et jugées par
" les arrests, concernant les dépens, dom-
" mages et intérêts, pour servir d'instruction
" aux juges qui en prononcent la condamna-
" tion et aux procureurs et practiciens 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
" dépens, envers celui qui a obtenu; *victus victori in expensas sumptus qui 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 e[illegible] dépens envers sa partie adverse, et ce, nonobstant qu'il y a coutume contraire, que le Roi déclare par ces ordonnances, abusive, au registre cotté *Ordinationes antiquæ*, fol. 3. Ce que Justinien enjoint aux juges si estroitment et précisément que s'ils oublient ou négligent de ce faire; *ipsi de proprio hujusmodi pœnæ subjacebunt et reddere eam parti lasæ coarctabuntur.* Il prend la condamnation des dépens pour peine, qu'il veut que les juges portent et payent de leurs propres deniers, qui n'auront condamné 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 ministère d'aucun
" advocat ni de procureur: je tiens que l'advo-
" cat 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 rémuneration de sa
" temérité il obtiendra une immunité et
" exemption de dépens. Autrement serait
" astreindre les advocats de commettre leurs
" affaires entre les mains d'autres personnes
" de semblable qualité, qui, vraysemblable-
might have devoted his time to some other cause or causes, and might have made the same profit of which he would be deprived if he could not exact his costs.

Translation.

Civil Procedure of the Court called le Chatelet Paris, Edition, 1779. of the Instruction, 2nd book, 2nd part, by Mr. Pigeau, Advocate.

Attorneys can exercise their ministry for themselves, their wives, children and relatives, which the Bailiffs and other officers of Justice must not do.

Translation.

" The new French Practitioner, by Rene
" Gastier, in the Court of the Parliament of
" Paris, Edition of 1665, *maxims established by
" the laws* and *adjudged by the decisions concern-
" ing costs* and damages intended for the
" *instruction* of Judges who may pronounce a
" condemnation to pay costs, and to the
" Attorneys and practitioners who attend at
" the taxation and liquidation thereof.

Title of the taxation of costs.

" It is a general rule affecting all lawsuits
" that he who has lost his cause, whether as
" Plaintiff or Defendant, shall be condemned
" to pay costs to him who has succeeded. It
" is the ordinance of *Charles IV, of the year*
" 1324, which orders that he who fails in a
" cause shall be condemned to pay costs to the
" adverse party, and that notwithstanding
" any custom to the contrary, which custom
" the King declares to be abusive. It is that
" which Justinian enjoins upon the Judges
" so strictly and precisely that if they forget
" or neglect to condemn to costs, *they them-
" selves will be compelled to pay them.* He
" holds the condemnation to pay costs *to be a
" penalty that the Judges shall pay out of their
" own proper funds should they not have con-
" demned him who has lost his cause to pay
" costs.* It was so adjudged in the Court of
" the Parliament of Paris on the Second of
" January, 1569."

What is to be said of *him who has conducted his own cause* and has not availed himself of the ministry of any Advocate or Attorney? I hold that the *Advocate who has written and argued for himself and obtained a condemnation in costs can require the taxation thereof, and cannot be compelled to make over the value of his work to him by whom he has been unduly vexed, for recompense of which undue vexation, and by way of remunerating him for his temerity, the party so vexing would obtain an immunity and an exemption from the payment of costs.* Any other mode of proceeding would compel Advocates to entrust their affairs to other persons of the same quality who would probably accept no remuneration, or to cause their pleas to be signed by other Advocates, because, were they to be compelled to sue for

" ment 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 souveraines. 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, toute- " fois 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 travail et il faut qu'il y soit condamné " comme si c'était un autre qu'il 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 de salaire."

damages, the difficulty would be endless, and, it may be added has never been practised. The reason as stated by Clement Vailliant is that *he who can and chooses to appear for himself must not be prevented.*

Jurisprudence of the Code.

The Customs and Decisions of the Sovereign Courts. By M. C. Feriere, VII book. Paris, Edition of 1684.

Although he who has obtained a judgment in his favor should have himself written all the proceedings, he should nevertheless obtain a condemnation to costs against his adversary, because it is not just that that adversary who has failed in the cause should profit by the work of the successful party, and it is necessary that he who fails in the cause should be condemned to pay costs as if another than the successful party had done the work. It would be unjust to act otherwise, because he who has succeeded in the cause, if he were not allowed compensation for the labor, might have devoted his time to the service of others, and made the same profit that he ought to receive in working for himself.

The course which Judge Duval has thus untruly said was in conformity with the Jurisprudence in France was pursued against me in three cases, namely, in the present cause, in another cause against me at the suit of the same Plaintiff Brown, and in a suit brought against me by one Ferguson, his servant, who claimed from me compensation in damages for having taxed him with perjury when under examination as a witness. The attempt was also made in a fourth case, but limiting my complaint to these three cases I calculate my loss, adding interest to principal, at some thousands of dollars.

Bearing in mind Judge Duval's confident assertion that to refuse fees to an Attorney who acted for himself (as he did in the Judgment herein above quoted) was in conformity with the Jurisprudence in France, my readers will please to note that having been subsequently subjected to a similar outrage I appealed to Her Majesty the Queen in her Privy Council. A report of the case is to be found in the eleventh volume Lower Canada Reports, page 484. Upon referring to that page any one, taking a sufficient interest in the subject, will find a number of old French authorities cited by Judge Taschereau, proving incontestably that Judge Duval was wrong, and that the Jurisprudence in France was precisely the reverse of what he had alleged it to be.

The Judgment denying me fees was accordingly reversed, but not until I had been compelled to cross the the Atlantic eight times at my own expense.

The opinion of the Privy Council was not only favorable to me, but their Lordships said that they " were constrained to observe that they could not understand how the reasons given " by the Canadian Judges could be good reasons for disallowing to the attorney his fees for " services performed in the cause as attorney. Their Lordships add, that they thought that " it was the duty of the Canadian Courts to administer the old French law, and that those " Judges could not alter it or decline to apply it on grounds of supposed expediency as they " appeared to have done in that case and in the preceding cases * on which that Judgment " was founded."

It will probably be surmised that the " grounds " for refusing me fees were not merely " *supposed expediency ;*" but I have promised to deal only with matter of fact.

Accordingly I submit a copy of some facts which are intended to show the intense selfishness of Judge Duval, and his high-handed, indecent refusal, to make reparation for the wrong which he had perpetrated. The first fact is the underwritten Petition :

* That now in question is one of the *preceding cases* here referred to.

To th · Honorable the Justices of the Court of Queen's Bench, Appeal Side.

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 aggression*, 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 those 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 Petioner, 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 Court who concurred therein, to repair the evils which *they have caused*, and he has suffered.

Quebec, 14th March, 1867. A. GUGY.

The foregoing Petition was presented on the fourteenth of March, and on the ensuing day the Court ordered it to be taken off the files.

This was the only notice taken of it, and there is no record of it, for it was returned to me bearing the above mentioned order. Nevertheless—if I could have relied upon the integrity and courage of such Judges as might in rotation be called upon to adjudicate, or could expect to live long enough to see the end of it, I could have sued Judge Duval and recovered the amount.

The authorities hereinbefore cited will be found to support this pretension.

Gentlemen, having entered upon my seventy-seventh year, I cannot hope to live long enough to see how you will deal with this matter, nor even perhaps to address you a second time. Hence it behoves me to communicate to you as many facts bearing upon the subject as I can without much difficulty substantiate.

Ferguson's action, No. 873, was brought on 26th April, 1859. He complained that, in commenting upon his evidence in favor of my adversary Brown, I had charged him with perjury, and demanded the moderate sum of £500, by way of damages. I thereupon appeared by attorney, and Mr. J. R. Smith was my attorney. His appearance, still on the files, and the plea "justification" are all in his well-known hand.

This plea not being suited to the peculiar constitution of Ferguson he demurred, and Judge Andrew Stuart, dismissing my plea, condemned me to pay one hundred dollars damages with costs.

Driven to desperation I appealed, and the judgment against me was reversed—reversed in spite of Judge Duval, who would have confirmed it.

The judgment in Appeal bears the 7th May, 1851. It reverses the judgment against me with costs in both Courts, adding (and here I copy its very words) what follows: "In the taxing "of which costs no attorneys or other fees upon any of the proceedings had in either Court "shall be allowed to the Appellant by reason of his being a practising attorney, and of his "having conducted his own defence."

But this—though Judge Duval affirmed it—*was not true*.

GENTLEMEN,

Should Judge Duval impute to me any statement not absolutely true, he can, as you know, bring me before a Jury, and I hereby defy him to do so. Should any part of the foregoing narrative appear to you, however, to be incredible, by referring it to a committee composed of honorable men, you will have the means of testing my veracity. Then if after enquiry you should find, as honorable unprejudiced men must find, it to be truthful throughout, you cannot avoid coming to one of two conclusions:—

1. Judge Duval either knew the law, or did not know the law, when he so deprived me against law of thousands of dollars, and greatly encouraged my adversary. If Judge Duval did not know the law he was and is a most ignorant, a most contemptible and pitiable caitiff, and should be condemned to repay me my actual money losses, besides making compensation for the loss of twenty years of my life spent in defending myself. By way of example he should also be condemned to the penitentiary for ten years.

2. Should you, on the contrary, become convinced that he did know the law you cannot deny that he is a far more unprincipled and detestable wretch than any thief whose name has ever figured in the annals of crime. In this case he ought to be confined in the penitentiary for life.* But attempts will be made to *excite your pity*, and for obvious reasons the so-called Minister of Justice, among others, will assure you that Judge Duval *only sympathised with Brown because I had attacked Brown.* This would be nothing new, for, when referring to this subject, I have often had the mortification to be doubted, and one man, a European of course, deeming my account incredible, and finding that Brown was a layman and I a lawyer, distinctly intimated that he never would believe that *the hare had hunted the hound.* Owing to that offensive imputation I did not stay to inform him that I had had within the last twenty years to contend (here and in England) against some twenty-five lawyers, all retained in some one or other of the actions or appeals into which Brown had unfairly dragged me.

Like the deaf adder he would not hear, but you will enquire, learn and believe that Brown was, as I affirm he was, the aggressor. I repeat—you will either believe what Mr. Ryland has affirmed, on oath, and I have herein above distinctly stated, that Brown was the aggressor, or you will, at least if you doubt, you ought to enquire.

I have in the foregoing pages adverted to the four consecutive actions brought against me by Brown—*all* dismissed, in *all* of which when, carried into appeal, he failed.

Finding as you will see that the witness Vennor has sworn "that as he (Brown) could not "succeed in that way he was determined to succeed in another, and in order to have *the pleasure of taking my property in execution and causing it to be sold,*" he resolved to buy up and did buy up my debts. In a attestation arising out of the purchase of a debt due to one Campbell, which he had bought, and for which he had obtained a judgment and upon that judgment had sued out an execution for an amount *which he had then previously* received, he was cast and condemned to pay costs.

On presenting my bill to be taxed I was met by an objection to my claim for fees, and on that objection (made by Mr. Parkin, Brown's attorney) the taxing officer, admitting the objection *to be founded on the precedent which I have cited,* disallowed the charge for fees.

Upon appeal, however, to the Court over which Judge Tascherean presided, that decision was reversed, and I was allowed fees.

This decision, proving that that Judge did not acquiesce in the legality of the above reported, previously recorded decision of Judge Duval sitting in appeal, was of course immediately brought up for revision in *his*, Judge Duval's, Court, and there—as was to be expected—the Judgment in my favor was reversed.

Here, Gentlemen, I beg and earnestly hope that you will order the original Judgment as written by one of the Judges, and also the record of it as duly entered by the officer of the Court, to be laid before you.

The copy now submitted for your perusal is, I affirm, word for word a true copy. But please recollect the drunken frolics of Chief Justice Jeffries, for I who, unfortunately detesting spirits, am disliked by drunkards, a powerful body, having a well known protector, dare not say more. But stung, goaded by the humiliating position in which I have been compelled to stand before Judge Duval and his compeers, and by the losses thereby entailed on me and on my innocent children, I venture to call upon you, as you will answer to Almighty God, to enquire into the condition to which its organ and President, Judge Duval, has reduced the Court of Appeal. As a matter of duty as well as of *curiosity* you may also enquire into

* That is the punishment to which he would have condemned me, had I unlawfully abstracted any part of his salary. But I have the same right (at least) to my fees that he has to his salary—and society is interested in the preservation of the independence of the Bar.

the figure that he cuts on the criminal side of the Court, and why there should be so many failures of justice, and why it should have become a mere huge complicated, expensive, whitewashing machine. And perhaps you may learn, or infer why he is its President.

But here follows an exact copy of the Judgment as it is recorded.

"PROVINCE OF CANADA, } COURT OF QUEEN'S BENCH (APPEAL SIDE.)
"LOWER CANADA. }

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

"PRESENT:

"The Honorable Mr. JUSTICE ALWIN,
" " " Mr. JUSTICE MEREDITH,
" " Mr. JUSTICE MONDELET,
No. 89. " " Mr. JUSTICE BERTHELOT, suppleant,
" " Mr. JUSTICE BADGLEY, ad hoc.

"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, *Appellant*,

AND

"The said BARTHOLOMEW CONRAD AUGUSTUS GUGY, *Opposant*, a fin "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 said "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 reasons 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 Attorneys *in cases in which they act as Attorneys 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 consi[illegible]ered 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 below 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 Appellant, 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 and Pentland, grant them *distraction de dépens* in "this cause."

Mr. Parkin, (Brown's Attorney), a gentleman of acknowledged ability and profound information, had, as you have been informed, successfully objected to my claim for fees. His claiming *distraction* is a proof both that he attached (and I admit justly attached) great importance to that item of his income, and that he had no confidence in the honor of his rich client. But he could only be entitled to fees because "*he had acted as Attorney in the cause.*" Now you being *conscientious* men will probably condemn the distinction which the Court made between us. Why should fees be denied to me and granted to him, for, though he is, as a practitioner, much my superior, he had done no more work than I, he had acted as Attorney in the cause and so had I. But as you will read or have read the sagacious decision of the Court that "*by law "and practice no fees can be allowed to Counsel and Attorneys in cases in which they act as Attor- "neys in the cause,*" you being independent of the Judges (which I am not) will possibly

* This taxation of costs rejecting my claim to fees was the only question.

insist upon being informed of the cases in which fees can be allowed them, and if the Court—(always excepting Judge Mondelet, who dissented) if the Court intended to allow fees indiscriminately to all Attorneys who HAD NOT ACTED AS ATTORNEYS.

Finally, I offer for your information the following statement: In May, 1864, I brought an action for compensation in damages in which there have already been not less than *five* appeals, and I am no further advanced than upon the day when that action was brought.

In the interval I recovered a verdict for $17,986, but this decision was of course summarily overturned by the Superior Court. That obliged me to apply for redress to our Provincial Court of Appeal by which the decision of which I complained was modified. Judges Duval and Badgley dissenting, I was thereby directed to submit my case to another Jury, which I did. But on this occasion one Ramsay, a European, presided. He is a young lawyer, having no claims whatever to the distinction of Assistant Judge, but promoted for causes which I shall not describe over the heads of fifty of his seniors and his superiors, including Strachan Bethune and other able and worthy natives. This Ramsay of course decided that Judge Duval's opinion could not be discussed, and charging violently against me he induced the Jury to find in favor of the Defendant. This matter is now before the Provincial Court of Appeal, and the conduct of this Ramsay the cause of that Appeal.

Until it is decided I can say no more on the subject, but if I live I will succeed or at least bring it under the notice of Her Majesty the Queen in Her Privy Council.

I have endeavored to draw a picture of Judge Duval, and beg to offer you in addition a profile of the adversary who has been, as I have shown, at my expense, the object of so much judicial patronage.

That it may be understood it is necessary to premise that it was generally known that I had gone to England to appear in person before the Judicial Committee of the Privy Council, and that before my arrival the hearing of the cause had been postponed, and that having returned to Canada I was about to repair once more to the Court in England into which I had been dragged. Upon this subject the witness Venner having said that as he was passing my adversary's door the latter opening it requested him to walk in, continued as follows:—

Brown said: "Venner, you will very shortly laugh well. Gugy is going to England and "he will return as he went, for I have the means of causing the lawsuit between us to be "decided in his absence, because I am more cunning than he is."

In another part of his evidence the same witness testifies as follows:—

"During three or four years Brown came to my house expressly to enquire whether any "people having claims on Colonel Gugy ever called on me to discount them, to which I answered "in the affirmative. Thereupon Brown said, 'Tell them to come to my office and I will give "them the full value of their claims.' I then asked him 'Why should you do that? one never "pays the full value when discounting a claim, especially when the debt is not payable immediately but after some delay.' He answered, 'That's my business.' He has a hundred times "given me his reasons for acting in that way, and that with anger; and he has said: 'If I "can't succeed in one way I'll succeed in another; because I've lost many lawsuits with Gugy, "and I shall at least have the pleasure of taking his property in execution and causing it to "be sold.' Brown also told me that it was his intention to crush down Gugy, by which I "understood him to say that he intended to ruin Gugy."

To elucidate this subject, an extract from the evidence of Edouard Robitaille, a Justice of Peace, is subjoined: "I said to Brown, 'make a note in a book, of the day on which you "begin, and you will tell me when you will have finished with Colonel Gugy, because I "don't think that he will let you deprive him of his land without defending himself.' Brown "answered that he had contended with other persons whom he had overcome, and Brown "added, 'I will overcome him also.' From Brown's manner of speaking, I understood that "he intended to ruin Colonel Gugy, and to deprive the latter of his land in spite of him. "On meeting Brown subsequently I spoke of his lawsuit. Brown said, 'it will all be soon "settled, for I have judgments against Colonel Gugy, and I will seize his property and cause "it to be sold before long, and I'll manage to overcome him."

Here follows an extract from the testimony of Mr. Smith, an Advocate:

Speaking of his lawsuits the witness said to Brown, "they must cost you a great deal "of money, Mr. Brown. That's of no consequence, he replied, I've enough to accomplish my "object. I make some every day one way or another; I'll effect my object; this morning, "(it then was only ten), I cleared one hundred dollars. I recommended his buying Gugy's "property, but he would not."

"He told me that he would prosecute Gugy as long as he lived and had a dollar, and "that at his decease he would impose upon his descendants the duty of prosecuting Gugy."

Gentlemen, you can now form and will probably form some idea of the way in which the law is administered in this section. But here follows what many will hold to be an incredible statement; I, however, who affirm that it is true, am ready to prove it:—

Lawrence Ambrose Cannon of the City of Quebec, Advocate and Attorney, brought an action against Elizabeth Healy of the same place, *widow*, and he—this advocate and attorney—conducted his own suit.

On the 28th June, 1851, he recovered Judgment with interest and costs—costs including fees.

Now, Gentlemen, Mr. Cannon acted aggressively, while I, as you now know, stood on the defensive throughout.

Mr. Cannon sued *his own client* for fees claimed by him for having acted as her attorney in some former suit at law.

That client was one of a class always more or less unhappy, whose condition is proverbially commiserated.

The Judge, however, granted fees to the Attorney who had conducted his own case, and that Judge was Judge Duval.

Can you imagine why he allowed fees to Mr. Cannon and refused them to me?

Was my conduct in defending myself successfully so shocking that it was necessary to make an example of me?

The law for which Judge Duval affects to entertain so much respect—the "*Jurisprudence* "in France" was not changed expressly to enable Judge Duval to act arbitrarily and capriciously. Or the contrary it was in 1851, what it was in 1861 in 1862—and remains unaltered to this day. He was evidently, however, of opinion that the poor widow deserved less consideration than my wealthy adversary.

Or perhaps, Gentlemen, he had another reason. But having now been involved in between thirty and forty contestations, except upon oath at your Bar, should you see fit to examine me, I must not whisper a syllable of the cause of the distinction which his Honor the Honorable Judge made between Mr. Cannon and me. Let me add that I ascribe no manner of impropriety whatever to Mr. Cannon. He had a right to act as he did. And luckily for him, wiser and more prudent than I, he—but this is a delicate subject on which I must not dilate.

Since the first of the foregoing lines were sent to the printer, two reports have reached me; One is to this effect, that Parliament is to be moved to increase the salaries of the Judges, and to augment their number. Another is that Judge Duval is admittedly so utterly devoid of dignity, and so wholly unfit for the Judicial Bench, that he will be requested to resign or to retire, and that his special friend, the Minister of Justice, will provide him with a pension equal to his salary. In my opinion good Judges, men worthy of the highest and noblest mission which Almighty God has confided to man, cannot be over-estimated; but unless you are prepared to subsidize pick-pockets, to reward burglars, and to offer premiums to area sneaks, unless you look upon the system through which alone the people are led to expect a just disposal of their differences as a mere organisation for the creation of blood-suckers and tyrants, you, lawgivers and rulers in the land, you will make, for the benefit not only of the present but of future generations, you will make an example of Judge Duval.

Could I but have had the good fortune to profess at the same time two religions like that late lamented pious prime minister, or to have been blessed with a due sense of the propriety of going on the spree with another, and being, like him, drunk, and for whole fortnights unfit for business, or could I even have encouraged instead of repeatedly running great risks to

save life and property during the Montreal riots, or could I have but possessed an attractive an[d] accommodating female relative, I should doubtless have been brought under the vice-regal notice as worthy of some public reward.

You will admit that history always eventually does justice to the actors on the great theatre of the world, and while we are aware that it would *tempore* James the Second have been very dangerous to have drawn a picture of that infamous wretch, Chief Justice Jefferies, we at this day appreciate him fully.

Then we now know that, on the sudden death of that monster Caligula, some leading pretorian, accustomed to minister to the pleasures of Messalina, hauled the trembling Claudius from under her bed to make him an Emperor, and we now speak of the fact without any apprehension. But that Imperial lady would have stood no nonsense, and in her day it would have been confoundedly dangerous to advert to divers circumstances, as dangerous as it would now be to describe the causes for which and the modes by which the basest curs in our community may be, and indeed sometimes appear to be, selected for preferment. And of you too, Gentlemen, posterity will speak as you may deserve.

There may be among you one, who, while hunting in his native woods, has found it necessary to concentrate some refractory coals, that extending beyond the limits of the camp fire, might have caused a wide-spread conflagration. To effect his purpose he may have selected as a fitting instrument, some branch which, when it had served his turn he threw into the fire to be consumed. The fate of the branch has been mine and my services have entailed upon me oblivion and want. That is an accomplished fact beyond your reach, but you can interpose to protect me from oppression and ruin. You can punish one, who while the facts and the law have been favorable to me, has invariably and systematically decided against me.

Gentlemen, the matter rests with you, and you can countenance and increase or punish and diminish political and moral wrong at your pleasure. I claim no favor, but I demand justice; and if my wrongs should intrude upon the attention of any good and brave man let him reflect less upon me than upon the lesson inculcated by my narrative.

You will be adjured to remember the sanctity of the judicial character, and to vote large pecuniary compensation. But the difference between a good judge and a bad judge is as that which exists between a man in health and one stricken with the plague, between a God-fearing man and a skunk in a state of hydrophobia. If you do not discriminate you encourage the bad. Multitudes, including widows and orphans, unable to complain, crushed by similar wrongs as mine, have perished in holes and corners as rats die; and if you are merely passive will again.

A. GUGY.

Quebec, January, 1873.

TO THE

HONORABLE THE MEMBERS

OF THE

HOUSE OF COMMONS

OF

CANADA.

THE PETITION

OF

BARTHOLOMEW CONRAD AUGUSTUS GUGY.

TO THE