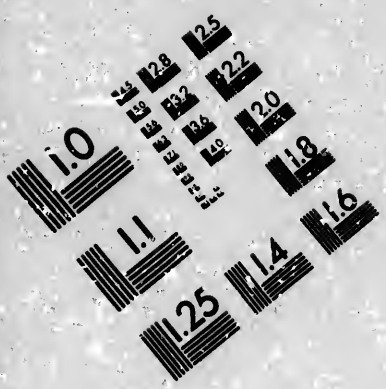

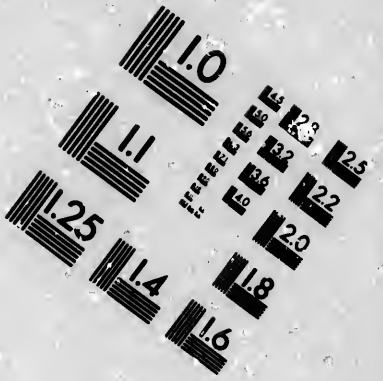

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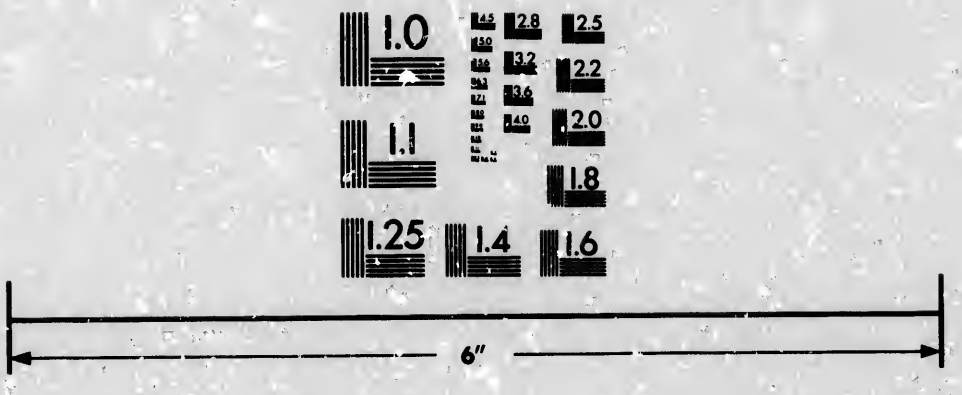

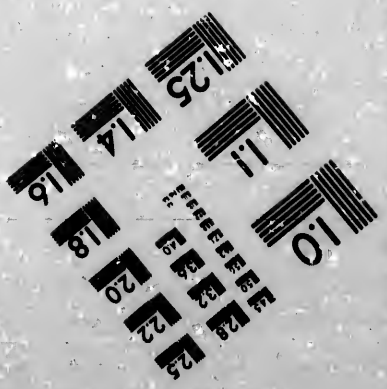

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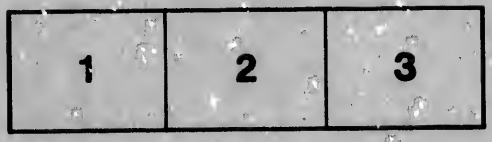

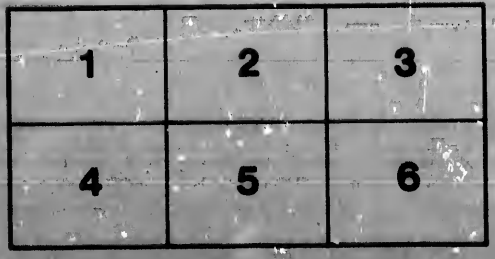

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LEGAL INTELLIGENCE.

HON. MR. JUSTICE ANDREW STUART.

This gentleman's habits are absolutely perfect. His temper is good; his deportment is courteous: his manners pleasing. He is well versed in the law, speaks both languages, is regular in attendance in Chambers, and readily performs all the duties devolving on him. It was and is natural, therefore, that I should have conceived for him great respect and regard; and viewing him as a model Canadian, I was pleased with his appointment, and have often cited him *as one* of whom the country might very justly be proud.

All these good qualities are, however, upon certain occasions marred by one fault—a fault in which the present notice of the Judge has originated.

Owing to causes which have not only been noticed in pamphlet form, but which have become matter of notoriety, I brought an action claiming damages for persecution under color of law. The defendant met this claim by a demurrer, and Mr. Justice Stuart, maintaining the demurrer, dismissed my action. As in cases of this kind nothing should be left to the imagination—nothing stated which is not susceptible of proof—I submit, in order that my readers may draw their own conclusions, I submit a copy of his judgment dated 5th October, 1864, as it is recorded:

"The Court having heard the parties by their Counsel, "respectively *en droit* upon the pleadings, to wit: upon the "*defense en droit*, fyled by the Defendant to the Plaintiff's "action in this cause, considering that the reasons assigned

"in support of the said demurrer are well founded in law,
"doth maintain the said demurrer, or *defense au fonds en droit*,
"and thereupon doth dismiss the Plaintiff's action, with costs."

This is perfectly intelligible, but it lacks an essential requisite—a *statement* of "*the reasons assigned.*" The judgment would be quite as good a judgment as the foregoing; it would not be a whit more illegal had the Judge used the underwritten words, that is to say, "Considering that the "Defendant is right and the Plaintiff wrong, the Court doth "maintain the said demurrer, and thereupon doth dismiss "the Plaintiff's action with costs."

This last form would have given quite as much information as that which the Judge preferred. Here, then, I charge the Judge with having voluntarily and intentionally, it is to be presumed, broken the law. The well-informed Judge will of course appreciate the force of the foregoing accusation, but the public will require proofs. It is to satisfy that natural desire, and to shield myself from unjust, but probable, imputations, that, without pausing, I bring the law—the written and perfectly conclusive text of the law—to bear upon the Judge. The article 472 of the Code directs that

"Every judgment must mention the cause of action. . . .
"In contested cases it must moreover contain a summary state-
"ment of the issues of law and of fact raised and decided, the
"reasons upon which the decision is founded, and the name of
"the Judge by whom it was rendered."

Such is the law as it stands, and nobody knows that better than Judge Stuart!

But that has always been the law. As judges are the only individuals who can break the law with impunity, and as it has often been broken as Judge Stuart has done, the Legislature found it long since necessary to interpose for the protection of the citizen whose misfortune it was to be a suitor. Thus the act,—chapter 83 of the Consolidated Statutes,—

contains at page 715 the enactment herein underwritten—that is to say—

"Each final judgment and *each interlocutory* judgment "from which an appeal will lie, rendered by the Superior "Court, shall contain a summary statement of the points of "fact and law, and the reasons upon which such judgment is "founded."……

Having thus quoted the law, which being, fortunately for me, written and accessible to everybody, may be compared with the judgment, I submit to my fellow-citizens, that the fact is, that Judge Stuart has broken the law. It may be also fairly assumed that he knew that he was breaking it, and intended to break it, unless indeed he should be willing to plead ignorance of the law.

Leaving him the choice of the alternatives, I would enable laymen to form a just estimate of the rules which Judge Stuart has so broken.

Any litigant who may be dissatisfied with a decision against him may appeal. But no reasonable man would adopt such a course without taking advice.

Now, with a judgment upon a point of law (which is my case), a judgment containing "the reasons upon which the decision is founded," the suitor can repair to the office of any counsel. Submitting a copy of the judgment (which the suitor may have himself taken), he can, on payment of a comparatively small fee, obtain the requisite advice. It is quite otherwise when the judgment amounts to a mere expression of an arbitrary determination unfavorable to the suitor, and is altogether silent upon the motives of the Judge. In such a case, the trouble of counsel would be quadrupled, and so would the fees! To the poorer classes, on whom the law always bears most heavily, the omission of the Judge to assign his reasons would frequently operate as an insuperable barrier, and would generally if not always incapacitate

suitors of that class from appealing. This, then, is a mode by which a Judge disposed to substitute his individual will to the law might be enabled to carry his point.

It did not, however, do so in my case, for without then complaining in print, as I do now, feeling that the Judge was wrong, I went into appeal. The expected result followed, and on the 29th of June 1865, the above cited judgment of Judge Stuart *was reversed* with costs. My action, then, *contrary to the opinion of Judge Stuart, was declared to be a good action*, and the result thenceforth would of course depend upon the kind of proof which might be adduced in its support.

The Defendant subsequently pleaded to the merits; but, as under the circumstances it certainly behoves me to do, I must state that such is the mode of administering the law in this country, that the cause in question, numbered 691, has been four times in appeal, and on the first and last occasions solely as a consequence of an act of Judge Stuart. I must not characterize those acts, but both of his judgments were reversed, and if I live, and can pay for the printing, all the facts shall and will be published.

In process of time (on the 14th of February 1871), the cause was brought under the consideration of a jury, and after a trial which lasted twenty-four days, they gave me a verdict, of which the presiding Judge approved, for $17,984.

Great efforts were of course subsequently made to set aside this verdict, and Judge Stuart being again unfavorable to me, it was set aside, whereby I lost, including costs, some $22,000. Ascribing that loss to the self-love of the Judge, and proposing to show how it was brought about, I hope to be understood.

Subsequent to the fyling of the Defendant's motion to set aside the verdict, and before the parties could be heard, that is to say, on the 4th of April 1871, Judge Stuart made a written declaration, and after reciting as much of the declaration as he saw fit, he expressed himself as follows:

"There was a demurrer fyled to the declaration which "came on for argument before me and was decided in Octo- "ber, 1864."

"The present action alleges no infraction of the personal "liberty of the Plaintiff, nor of his rights of property, but "simply of the institution of certain suits against him and of "their failure in all the Courts to which they were succes- "sively brought."

"The demurrer raised the question whether the bringing "of an action without good ground gives rise to a recrimina- "tory action, or, in other words, whether an action lies "against a solvent Defendant for maliciously and without "reasonable or probable cause bringing an action against the "Plaintiff whereby damage of the nature of that alleged in "this case can be recovered, and whether the law is as alleged "by the Plaintiff."

"I found no case* where such grounds of damage were held "to constitute legal damage for the recovery of which an "action would lie, and I maintained the demurrer and dis- "missed the action."

The above-written declaration contained nothing new; but, viewed by the light of the 179th article of the Code (hereinunder cited), it will be found to be wanting in an essential particular.

Art. 179.—"Any Judge who is aware of a ground of "recusation to which he is liable, is bound, without waiting

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* The Judge does not affirm that he *sought*, still less specify the law books in which he did *not* find. A candid judge would have ordered a rehearing, and stated the point on which he needed information. From the act of the Court of Appeal in reversing his decision, Judge Stuart might have inferred that there was law in *some* book, *some* law—law *enough*—to sustain the action; but evidently the Judge would not—or at least did not open *those* books, and *for the second time* did dismiss—did *dismiss* my action upon the *same grounds* and for the *same reasons* by which he was moved to dismiss it on the 5th of October, 1864.

"until it is invoked, to make a written declaration *of* it to be "fyled in the record."

Most laymen who read the foregoing lines will necessarily conclude that (assuming that Judge Stuart was bound to conform to the law) he was guilty of a lamentable suppression of fact, for he did not make any declaration of the *ground* of recusation to which he knew himself to be liable. Should any individual entertain any doubt, let him ask himself what it was that Judge Stuart was bound to declare, and he will be compelled to answer, any *ground* of recusation of which he might be aware.

To make this perfectly intelligible, it is necessary to take into account an event hereinbefore mentioned which had occurred since his dismissal of my action on the 5th of October, 1864, and before he made the above-written declaration. That event took place on the 20th June, 1865, in the Court of Queen's Bench, Appeal side, which *Court*, on that day declaring that in Judge Stuart's judgment of the 5th of October preceding there was error, reversed it, and declared that the Plaintiff *had* a right of action.

Judge Stuart, it is true, had, on the 5th October, 1864, held that the Plaintiff had *no right* of action. But, as in June following, the Court of Appeal, the Supreme Court of this Province, reversing that judgment, had determined that the Plaintiff had a right of action, and as Judge Stuart, a member of an inferior Court, is bound to defer to the Supreme Court, it was to be expected, that although he might not be convinced, nevertheless, that in the public interest, yielding to the authority and power of the Supreme Court, he would carry out its decision.

It was, however, precisely that which Judge Stuart would not do. He was of his own opinion still; he considered that the Court of Appeal had made the mistake which it imputed to him; and, adhering to his original view of the case, he resolved to dismiss the action.

These reasons, these grounds, it will be remembered he had not assigned, and, as during the six years which had intervened between the two dismissals, he had ample time for reflection, he might be naturally presumed to have acquiesced in the decision of the Court of Appeal. At least he might have been content to deal with the question which was submitted to the Court for decision, and assuredly the demurrer which he had maintained, and the Court of Appeal had dismissed, was not revived, nor was any fresh demurrer fyled. It appeared from his language, however, that he had all along intended at *that last stage* to dismiss the action. This intention *per se* might not be criminal. It was its concealment that constituted the criminality now imputed to Judge Stuart, for that intention, known *only to himself*, was a ground of recusation, and he was bound by every consideration of honor, of candor, and justice, to have made a declaration of it.

To form a just estimate of the conduct of Judge Stuart, it may be necessary to pause for a moment. He is certainly a gentleman of more than average capacity and information, but he cannot, or at least ought not to arrogate to himself any higher or greater rights, powers, or privileges than the other Judges of his Court possess.

If he can refuse to carry out a judgment of the Court of Appeal because he considers that he is wiser than the five members of that Court, so can every other Judge. Now, there are five Judges of the Superior Court at Montreal, five others (exclusive of himself) reside in this city, and there are probably four or five others in different parts of the Province. Every one of those Judges is upon a footing of equality with Judge Stuart; but if every one chose contemptuously to oppose the Court of Appeal, this last named tribunal might be advantageously dispensed with. The evils inseparable from this condition of things would, however, be incalculable, nor

could any lawyer affect to give advice, nor any citizen learn what in any given contingency might be his fate. I was misled by Judge Stuart. Anxious (after 19 years of litigation) for relief—afraid of additional delays if I recused him—believing him to be a man of veracity and honor, not without moral courage, I inferred, from the suppression to which I have adverted, that he would carry out the judgment of the Court of Appeal. And if he *had* resolved to *oppose* the Court of Appeal upon a point *not then submitted* for his decision but *long since decided*, it was a ground of recusation of which he alone was aware, and should have been included in the declaration that he had made—for the omission of such a fact—a fact of which he and he alone was aware, led irresistibly to the inference that no such ground of recusation existed!

On the fifth of June last, when the judgment was pronounced, however, he for the first time intimated that he had *not* changed his mind, and concurred *on that ground* with another Judge (who assigned other reasons) in dismissing my action. I maintain that it was then too late to state a fact which, until that moment, had been known only to himself, and which should have formed part, and the *principal* part, of the declaration that (affecting to conform to the 179th article) he had made on the 4th of April preceding. It is this suppression, which cost me $20,000, of which I complain, and which from my stand-point, in my opinion, constitutes a crime.

But as Judge Stuart, forgetting his relative position in the judicial hierarchy, sets himself above the Court of Appeal, and by words and acts censures it for sustaining what he styles "a *recriminatory* action," so he has disobeyed the law, the written law. I think that I know his opinion of Chief Justice Duval as well as I do my own, but there are other Judges on the Bench of the Court of Appeal, and besides, in this case, he has ranged himself on the side of Chief Justice Duval.

Writing for laymen, I must not only refrain from entering

into disquisitions involving any conflict of laws, but studiously avoid setting up my individual opinion in opposition to that of the Judge. It is enough for me that the law contradicts him, the written law quoted below, intelligible to every one who can read and understand English.

The article 1053 of our Civil Code is in the under-written terms :—

"Every person capable of discerning right from wrong is "responsible for the damage caused by his fault to another, "whether by positive act, imprudence, neglect, or want of "skill." This was the old law of France, and is the subject of the articles 1382-1383 of the Code Napoleon.

Now, I put to every reader of intelligence the question which the Judge was bound to ask himself:—

Seeing that I had proved that my adversary, the wrong doer, had brought against me four actions complaining that I had committed the very injuries that he had inflicted and I had suffered—seeing that he always failed, always appealed, and had been defeated eleven times—that he bought up my debts and sued me fifteen times, (as I alleged, and the Jury believed,) with intent to ruin me, and from sheer malice—seeing that I lost twenty years of my life in defending myself —was this a mere *recriminatory action* brought by me, as the Judge alleges, because of "the *bringing of an action*" (one action) "without good ground" by my enemy. If one and four were convertible terms, having the same meaning, the Judge would possibly be less open to censure, but I state the fact simply.

Here it is necessary to advert to the text of Judge Stuart's above-written declaration. In the first line of the third paragraph written after the trial, at a time at which all the proof was of record and perfectly accessible, he intimates that the question, &c., was "whether the bringing of *an action* "gives rise to recriminatory action, or whether an action lies

"against a solvent defendant for maliciously and without pro-
"bable cause bringing *an action*.

When he deliberately wrote and published that that was the *question*, he knew that it had ceased to be a question, that it was no longer a question, for the Court of Appeal, to whose decision it was his duty to defer, had *six years before determined*, had *decided* the question, had *six years before* settled it. He knew that no second demurrer had been fyled, that the defendant had acquiesced in the decision of the Court of Appeal, and that the then sole question was the want or existence of probable cause. Thus, he *individually* (Mr. Justice Stuart) seems to have imagined that he had an inherent right to overrule, to reverse, and set aside the decisions of the Court of Appeal; for his commission certainly did not invest him with that right, but, on the contrary, constituted him a member of an *inferior* tribunal *subordinate* to the Court of Appeal. There is a madman of the name of Moses in the Beaufort asylum who imagines that he has the power of annihilating the sun, moon, and all the stars, and of setting up a very much superior system of his own manufacture.

So Robespierre, before he became corrupted by the possession of absolute power, was a liberal and even a philanthrophic man. But if this be a free country, we are all interested in resisting—entitled to resist, and even bound to resist—the assumption of irresponsible power. Now, a Judge who imagines that he cannot by any possibility commit a mistake, and that no other men of any age from whom he differs can by any accident (whatever their number or their genius) be right, may become a dangerous lunatic, unfit to be entrusted with the administration of any branch of the law in the lowest court of "*pie powder*."

"Order is heaven's first law," and unless it be understood that litigants may resort, *must* resort to the revolver, every individual must be compelled to surrender his individual will

and judgment to the legal tribunals constitutionally organized. No exception can be admitted. In this category every Judge is included and so is every Court. As our Court of Appeal must yield to the decisions of the Queen in Council, so must Judge Stuart. But if he can resist one Court he can resist the other, thus constituting himself the great all absorbing one man power. I have obeyed and will continue to obey the law, reserving to myself the right to appeal when dissatisfied. But here there is, owing to reasons which will, I trust, henceforward be perfectly appreciated, no effectual appeal to constituted authority. Hence this prayer for the application of the lawful pressure of public opinion.

A. GUGY.