Kings Bench. Montreal.

Civil Pleas.

February Term. 1835.

April Term. "

June Term. "

October Term. "



JANVIER.

Le ☉ entre au ♒ le 21 à midi

☽ le 5 à 2h 43m Soir. ☽ le 20 à Minu
☉ le 13 à 6h 7m Mat. ● le 27 à 7h 35



FEVRI

Le ☉ entre aux ♓ le 20 à

☽ le 5 à 2h 43m Soir. ☽ le
☉ le 13 à 6h 7m Matin. ● le



MARS.

Le ☉ entre au ♈ le 21 à 3h 7m

☽ le 7 à 11h 18m Matin. ☽ le 21 à 8h
☉ le 14 à 5h 13m Soir. ● le 28 à 11h

v.	Cou.		MOIS.	Cl.	Sems.	FETES.
M.	H.	M.				
43	4	17	1	b	Jeudi	CIRCONCISION, *d'obligat*
42	4	18	2	r	Vendre	Octave de s. Etienne, 2M
42	4	18	3	b	Samedi	Octave de s. Jean, M
41	4	19	4	r	DIM.	*Vacat.* Oct. des ss. Innocens,
41	4	19	5	b	Lundi	De la Vigile, M
40	4	20	6	b	Mardi	EPIPHANIE, *Oct. d'obligat.*
39	4	21	7	b	Mercre	du 2d jour }
38	4	22	8	b	Jeudi	du 3e jour } dans l'Octave.
38	4	22	9	b	Vendre	du 4e jour }
37	4	23	10	b	Samedi	du 5e jour }
36	4	24	11	b	DIM.	1. ap. l'Epip. *Incip.* 1 *Cor.* M
35	4	25	12	b	Lundi	du 6e jour dans l'Octave,
34	4	26	13	b	Mardi	Octave de l'Epiphanie,
33	4	27	14	b†	Mercre	s. Hiliare, év. *Suffragia,* M
30	4	28	15	b	Jeudi	s. Paul, hermite, M
31	4	29	16	r†	Vendre	s. Marcel. pape mart.
31	4	29	17	b	Samedi	s. Antoine, abbé,
30	4	30	18	b	DIM.	2. s NOM DE JESUS, 2n
29	4	31	19	r†	Lundi	s. Canut, roi, m. *Inc. D.* 2. M
28	4	32	20	r	Mardi	ss. Fabien et Sébastien, mart
27	4	33	21	r	Mercre	ste. Agnès, vierge, mart.
26	4	34	22	r†	Jeudi	ss. Vincent et Anastase, mart
25	4	35	23	b†	Vendre	s. Raymond de Pennafort, M
24	4	36	24	r†	Samedi	s. Timothée, év. mart.
23	4	37	25	b	DIM.	3. Conv. de s. Paul, 2M
22	4	38	26	r†	Lundi	s. Polycarpe, év. mart. *Incip*
20	4	40	27	b	Mardi	s. Jean Chrysostôme, év. dr
19	4	41	28	b	Mercre	Ch. s, Pierre à Rome,(18) 2M
18	4	42	29	b	Jeudi	s. François de Sales, év. *Incip*
16	4	44	30	r†	Vendre	ste. Martine, vierge, mart.
15	4	45	31	b	Samedi	s. Pierre Nolasque.

v.	Cou.		MOIS.	Cl.	Sems.	FETES.
M.	H.	M.				
13	4	47	1	b	DIM.	4. Sol. Purification,
12	4	48	2	b	Lundi	Purification de Marie,
11	4	49	3	r†	Mardi	s. Ignace, év. mart. (1
9	4	51	4	b	Mercre	s. André Corsin, év.
8	4	52	5	r	Jeudi	ste. Agathe, vierge et
6	4	54	6	r†	Vendre	ste Dorothée, v mart.
5	4	55	7	b	Samedi	s. Romuald. abbé.
4	4	56	8	b	DIM.	5. s, Jean de Matha.
2	4	58	9	r†	Lundi	ste. Appolline, v. m. 2
1	4	59	10	b	Mardi	ste. Scholastique, vier
59	5	1	11	vr†	Mercre	
57	5	3	12	vr†	Jeudi	
55	5	5	13	vr†	Vendre	
54	5	6	14	vr†	Samedi	*Homil. et Missa D.* 6
53	5	7	15	vl	DIM.	SEPTUAGESISME.
52	5	8	16	vl†	Lundi	2. *Or. Fid. Ad. Mag.* a
50	5	10	17	vl†	Mardi	
48	5	12	18	vl†	Mercre	s. Siméon, év.
47	5	13	19	vl†	Jeudi	
46	5	14	20	vl†	Vendre	
44	5	16	21	b†	Samedi	De la Ste. Vierge,
43	5	17	22	vl*	DIM.	SEXAGESIME, sol. s. M
41	5	19	23	b	Lundi	s. Pierre Damien,
39	5	21	24	r	Mardi	s. Mathias, ap.
38	5	22	25	b†	Mercre	Ch. s. Pierre à Antio.
36	5	24	26	vl†	Jeudi	*Ad. Mag. Ant. Sem. é*
34	5	26	27	vl†	Vendre	
33	5	27	28	b†	Samedi	De la Ste. Vierge,

Venus sera l'étoile du matin
18 Octobre ; elle sera l'étoile
qu'à la fin de l'année.

ev.	Cou.		MOIS.	Cl.	Sems.	FETES.
M.	H.	M.				
31	5	29	1	vl	DIM.	QUINQUAGESIME,
30	5	30	2	vl†	Lundi	*Or. Fid. Missa sine Tractu.*
28	5	32	3	vl†	Mardi	*Feriâ* 2, 3*et* 4 *ad Mag. ant. pro.*
27	5	33	4	vl	Mercre	Les Cendres, M
25	5	35	5	b†	Jeudi	s. Casimire, conf (hier),
23	5	37	6	vl†	Vendre	
22	5	38	7	b	Samedi	s. Thomas d'Aquin, doc. 2M
21	5	39	8	vl	DIM.	1 du Carême,
19	5	41	9	b	Lundi	ste. Françoise, veuve, M
18	5	42	10	r†	Mardi	Quarante Martyrs, M
17	5	43	11	b	Mercre	4 *Tems.* s. Jean de Dieu,(8) M
16	5	44	12	b	Jeudi	s. Grégoire, pape doct. M
14	5	46	13	vl†	Vendre	*Jeûne des* 4 *Temps,*
12	5	48	14	vl†	Samedi	*Jeûne des* 4 *Temps,*
10	5	50	15	vl	DIM.	2 Sol. s. Joseph,
8	5	52	16	vl†	Lundi	
6	5	54	17	b†	Mardi	s. Patrice, ev. *Lect. fid. serm.* M
5	5	55	18	vl†	Mercre	
3	5	57	19	b	Jeudi	s. Joseph, 1 *Clas. Credo.*
1	5	59	20	vl†	Vendre	
59	6	1	21	b	Samedi	s. Bénoit, abbé. M
58	6	2	22	vl	DIM.	3e du Carême,
56	6	4	23	vl†	Lundi	
55	6	5	24	vl†	Mardi	
53	6	7	25	b	Mercre	ANNONCIATION, *d'obl.* M
51	6	9	26	vl†	Jeudi	
50	6	10	27	vl†	Vendre	
49	6	11	28	vl†	Samedi	
47	6	13	29	vl	DIM.	4e. du Carême,
46	6	14	30	vl†	Lundi	
44	6	16	31	vl†	Mardi	



AVRIL

L ☉ entre au ♉ le 20 à 3h

☽ le 6 à 4h 37m Matin. ☽ le
☉ le13 à 2h 22m Matin. ● le



MAI.

Le ☉ entre aux ♊ le 21 à 3h 47m

☽ le 5 à 5h 9m Soir. ☽ le 19 à 5
☉ le 19 à 5h 45m Matin. ● le 27 à 8



JUIN.

Le ☉ entre à ♋ le 22 à 0h 18m

☽ le 4 à 3h 12m Matin. ☽ le 17 à 7h
☉ le 10 à 5h 52m Soir. ● le 25 à 11h

v.	Cou.		MOIS.	Cl.	Sems.	FETES.
M.	H.	M.				
42	6	18	1	vl†	Mercre	
40	6	20	2	b	Jeudi	s. François de Paule,
39	6	21	3	vl†	Vendre	
37	6	23	4	b	Samedi	s. Isidore, *Ces. suf. Croi*
36	6	24	5	vl*	DIM.	De la Passion,
35	6	25	6	b	Lundi	s. Vincent Férier, (hier)
33	6	27	7	vl†	Mardi	
31	6	29	8	vl†	Mercre	
30	6	30	9	vl†	Jeudi	
28	6	32	10	b	Vendre	N. D. de la Pitié,
26	6	34	11	b	Samedi	s. Léon 1, pape,
25	6	35	12	vl	DIM.	Des Rameaux,
23	6	37	13	vl	Lundi	
22	6	38	14	vl	Mardi	
21	6	39	15	vl	Mercre	
19	6	41	16	b	Jeudi	Jeudi Saint.
17	6	43	17	noir.	Vendre	Vendredi Saint,
16	6	44	18	b	Samedi	Samedi Saint, *Ant. Reg.*
14	6	46	19	b	DIM.	PAQUES,
13	6	47	20	b	Lundi	Seconde Fête } de dév
12	6	48	21	b	Mardi	TroisièmeFête }
10	6	50	22	b	Mercre	
8	6	52	23	b	Jeudi	} De l'Octave,
7	6	53	24	b	Vendre	
5	6	55	25	b	Samedi	
4	6	56	26	b*	DIM.	1. Quasimodo,
8	6	57	27	r	Lundi	s. Marc. év. (25) *Abst.*
2	6	58	28	b	Mardi	s. Anselme, doct. (21)
1	6	59	29	r	Mercre	s. Pierre, martyr,
0	7	1	30	b	Jeudi	ste. Catherine de Sienne

v.	Cou.		MOIS.	Cl.	Sems.	FETES.
M.	H.	M.				
51	7	5	1	r	Vendre	ss. Philippe et Jacques, ap.
55	7	3	2	b	Samedi	s. Athanase, év.
54	7	6	3	r	DIM.	Inv. ste Croix, sol. Phil. &c. 2
53	7	7	4	b	Lundi	ste. Monique, veuve,
52	7	8	5	b	Mardi	s. Pie V. pape,
51	7	9	6	r	Mercre	s. Jean Porte Latine,
49	7	11	7	r	Jeudi	s. Stanislas, év. mart.
48	7	12	8	b	Vendre	Apparition de s. Michel,
47	7	13	9	b	Samedi	s. Grégoire de Nazianze, é
46	7	14	10	b	DIM.	ste. Famille, 2
44	7	16	11	r	Lundi	s Fidèle de Sigm. (24 Av.) *In*
43	7	17	12	r†	Mardi	ss. Nérée, &c. m. [*Dom*
41	7	18	13	r†	Mercre	s. Herménégilde, (13 Avri
40	7	19	14	r†	Jeudi	s. Soter, &c. mart. (22 Av.
39	7	20	15	r†	Vendre	s. George, mart. (23 Avril,
38	7	21	16	b†	Samedi	s. Ubale, évêque,
37	7	22	17	b	DIM.	4. s. Paschal Baylon,
36	7	23	18	r	Lundi	s. Venant, mart,
35	7	24	19	b	Mardi	s. Pierre Célestin, pape,
34	7	25	20	b†	Mercre	s. Bernardin,
33	7	26	21	r†	Jeudi	ss. Clet, &c. papes, (26 Avi
32	7	27	22	b†	Vendre	s. Antonin, év. (10,)
31	7	28	23	b†	Samedi	De la ste. Vierge,
30	7	29	24	b	DIM.	5 après Pâques,
29	7	30	25	b	Lundi	*Rogations*, s. Greg. VII. pa
28	7	31	26	b	Mardi	*Rogations*, s. Phil. de Neri,
27	7	32	27	b†	Mercre	*Rogations*, ste. Magdeline,
26	7	33	28	b	Jeudi	ASCENSION, (*d'obligatio*
26	7	34	29	b†	Vendre	De l'Octave,
25	7	35	30	b†	Samedi	De l'Octave,
24	7	36	31	b	DIM.	6 du Dim. dans l'octave,

ev.	Cou.		MOIS.	Cl.	Sems.	FETES.
M.	H.	M.				
23	7	37	1	b†	Lundi	De l'Octave,
23	7	37	2	b†	Mardi	De l'Octave,
22	7	38	3	b†	Mercre	De l'Octave,
21	7	39	4	b	Jeudi	Octave de l'Ascension,
21	7	39	5	b†	Vendre	
20	7	40	6	r	Samedi	*Jeûne* de la Vigile,
19	7	41	7	r	DIM.	PENTECOTE,
19	7	41	8	r	Lundi	2me Fête } de dévotion.
19	7	42	9	r	Mardi	3me Fête }
18	7	42	10	r	Mercre	*Jeûne* 4 *Temps,*
18	7	43	11	r	Jeudi	De l'Octave,
17	7	43	12	r	Vendre	*Jeûne* 4 *Temps,*
17	7	44	13	r	Samedi	*Jeûne* 4 *Temps, Salve Regina*
16	7	44	14	b	DIM.	1 STE. TRINITE,
16	7	44	15	r	Lundi	s. Barnabé, apôtre, (11,)
11	7	45	16	b	Mardi	s. Norbert, év. (6,) *Incipi*
15	7	45	17	b	Mercre	s. Jean de Facondo, (12)
15	7	45	18	b	Jeudi	FÊTE-DIEU, (*d'obligation*
15	7	45	19	b	Vendre	ste. Julienne vierge, 2
15	7	45	20	b	Samedi	De l'Octave,
15	7	45	21	b	DIM.	2 sol. Jean Bapt, *Process.*
15	7	45	22	b	Lundi	De l'Octave,
15	7	45	23	b	Mardi	De l'Octave, M. Vig.
15	7	45	24	b	Mercre	s. Jean Baptiste,
15	7	45	25	b	Jeudi	Octave de la FÊTE-DIEU,
15	7	45	26	r	Vendre	ss. Jean et Paul, marts.
16	7	44	27	b	Samedi	*Jeûne*, s. Antoine de Pade, (1
16	7	44	28	b*	DIM.	3 après la Pen. M [M. Vi
16	7	44	29	r	Lundi	ss. PIERRE & PAUL, (*d'o*
17	7	43	30	r	Mardi	Commén. de s. Paul, ap.

A.

Auldridge	&	Dunn	1	16		
Augé	&	Germain & opp^{t}	4	6	62	77
Albeck & p	&	others	30			
Ames	&	Love & al'	42			
Arnoldi	&	Bruneau	58	179		
Archambault	&	Devos & al'	62	208	225	
Aubertin	&	Mazere & al'	64			
Alliance Ins^{ce} C^{o}	&	Owston	112	155		
Annesley	&	Thresher	172			
Archambault	&	Labelle & Roi Intervs	187			

3. Bro... & Sp... 286 ag

B.

Bowstead	&	Bronsdon	8			
Blackwood	&	Jones	14	50		
Brewster	&	Nichols	16	18		
Bissonette	&	Rousselle	21			
Bachant	&	Malo	23			
Begly & al'	&	Burroughs	30			
Blache	&	Arnoldi	32	153		
Blanchard	&	Decoigne & al	42	76		
Bowen	&	Ayer	42	100		
Bagg	&	Robreau Duplessis	43			
Bradbury & al	&	Hoyle	44	76	114	
Bellingham	&	Dorwin & al'	48	102		
Burlingham	&	Miller	53	77		
Bowman	&	Berry	68			
Begly & C^{o}	&	Thompson	71			
Bleau	&	Ainse	71			
Blanchard	&	Begly & al'	73			
Bent	&	Berthelot	73			
Bond	&	Mckenzie & al'	89	101		
Begly Knox & C^{o}	&	Mkillip & opp^{t}	89	101		
Betts	&	Jones	92	103	154	
Bourassa	&	Faille	93	184		
Bank, Montreal	&	Cartier	95	102		
Benoit	&	Guilbault & ob^{t}	97	154		
Benoit	&	Morin & al'	114	145		
Blondeau	&	Bedard	116	188		
Brunet	&	Dubé & op^{t}	133			
Bourdeau	&	St Marie	138	153		
Boileau	&	Doucet	144			
Barsalou	&	Beaudry & Eddie	149	225		
Bechard	&	Girardin	157			
Beach	&	Dewitt	180			
Burry	&	Bruneau & al'	184			
Bender	&	Jones	186			
Bourassa	&	Vandal	190			
Burns	&	Tobin	193			
Boston	&	Bricault & op^{t}	199	226		
Brunet	&	Legault	208			

Clarke	Truax	3	6		
Cabbane	Cawthers	7			
Carsuel	Viau, & opt.	7			
Cook	Hutchinson	12	45		
Campbell	Achain & al'	19	102		
Campbell	Achain & al'	19	102		
Chenevert	Abbot & al'	20	51		
Craghuil	Evans	21	194	226	
Chicoine	Spinard	23	76		
Clement	Sauvé	34	102		
Cuthbert	Piquette	35			
Crooks	Bothwill & al'	45			
Couillard	Petition. Ex parte	63			
Crooks	Arnott	64			
Cuvillier	Dwston	65			
Clarke	Talon L'esperance	66	128	155	
Cartier	Menard	85	104		
Cotterill & al	Furniss & al'	94	153		
Couillard & al Ex parte	Petn for Certiorari	99			
Content	Tiffaut	124			
Cutler	Bentley	132			
City Corporation	Delisle & al'	154			
Charbonneau	Laflamme & opt	157			
Cliff	DeBeaujeu	158			
Coiteux	Brennet	172	209		
City Corporation	Leprohon	173	218		
Clarke	Truax & al'	187			
Cotterell	Gormly	189	226		
Collins	Drysdale	191			
Coyteux	Robitaille & al	214	226		
Cotterell	Furlay & opt	214	227		

Delisle	Augé & Econtr	10	56			
Demers & al'	Gibson & al	11				
Denaud	Forton & al'	22	77			
Donegani	Aaron	26	51	109	131	
Delisle	Provendier	27				
David	Leblanc & opt	47				
Demers & al'	Gibson & Econtr	50				
Dorwin	Spears	63				
Duff	Crombie	74				
Driscoll	Devins	99				
Debusat	Lorian	115	116	152	172	
Dorwin	Colburn & al'	115				
Demers	Robert & ux	136				
Duchenois	Boulbon	149	155			
Desjardins	Labelle & Econtr	174				
Desjardins	Paquet & Garant	174				
Drouin	D'aout	176				
Delorimier	Reigner & al'	180				
Dubord	Bourdon	181				
Duff	Crombie	186	226			
Drapeau	Charbonneau & al	196				
Deforest & al'	Bostwick & al'	196	227			

Ermatinger	Gorrie	118	152	
English	Stewart	193		
Fabrique. Lachine	Ducharme	8	86	103
Flaherty	Fortier & op^t	9		
Ferrier	Perrault	40	76	
Forsyth, Cur^t	Levesque	96	102	
Fingland	Watts & Co^{nie}	115	144	
Fleming	Ellice	127	210	
Foleigh	Jones	128		
Farquhar	Begly & C^o	146	224	
Forbes	Austin & Co^{nie}	189		
Fitzgerald	Harb	194		
Fisciau	Chartier	215		

Gleason	Davis	7		
Griffis	Contois	10		
Gravel	Jordan	11	50	
Goodwin	Delisle	26		
Gagnon	Dinconneau	55		
Globensky	Marié & al^t	64		
Greene & al^t	M^{c}Leod & al^t	89	106	
Gueroute	Quintin & op^s	117		
Glines	Douglass & Co^{nt}	130	152	
Guichaud & al	Baker	132	153	
Glasford	Bertrand	132		
Green & ux	Lesperance	134		
Grece	Cameron & al	145		
Gwinne	Gilles	147		
Greene	M^{c}Leod & al^t	185		
Gilmour & al	Molson & al^t	205		
Gibb & al^t	Johnson	209		
Goodsell	Torrance	213		
Gwin & al	Gillis	217		

Hamel	v	DeRouville	5			
Hobart	v	Knight	7			
Harriman	v	Barrows	10			
Hutchinson	v	Cook	13	50		
Hood	v	Campbell	14			
Hughes	v	Hartley	21			
Hebert	v	Canyré	26	29	51	55
Hamelin	v	Reine & e cont.	32	102		
Harrison	v	Nickless	53	77		
Hettrick	v	Tassé	87	100		
Harbeck	v	Papineau	90			
Hubbart	v	Mc dougall & op^{t}	108			
Hart	v	Squares	133			
Hobart	v	Phonix Co	135	142	224	
Hoyle, Rob^{t}	ex	parte	138			
Hely	v	Hurot fils	141			
Hart	v	Trudelle	142			
Hamel	v	DeRouville	145			
Hayes	v	Smaitte, Cur^{t}	208			

Jones	v	Sedgewick	29	66	
Joseph, Cur^{t}	v	Cuthbert	44		
Irvine Leslie &	v	Yule & al^{t}	76		
Jones	v	Betts	93	154	
Ilsley	v	Davis	93		
Jamieson	v	Carpenter & ux	107		
Jones	v	Hobart	124	155	
Jaret	v	Lefevre & ux	147	155	

K.

The King	Devins & al'	9		
Keith	Laframboise	21	54	
The King	Hoyle & al'	25	80	
Kidd & al'	Ross	34	154	
Kerr & al'	Massue & al'	38		
Kidd & al'	Dease	54		
Kidd & al'	McConnel & op^{t}	85	103	
Kidd & al'	Burlingham	103		
Kidd	McKillip & al'	140	154	
Kauntz & al'	Carter & al'	141	153	
The King	Bouthillier	215	216	
Kollmyer	Bouthillier			

L.

Larichcliere	Patenaude	3	6	10
Laurière	Lacroix	17		
Leslie & al'	Camyré & op^{t}	23	52	
Lussier	Brodeur	25		
Leslie & al'	Yule & al'	36		
Lebrun	Desjardins	37		
Leslie & al'	Dufaut	48	52	96
Laurier	Laurier	55		
Lalande	Raisenne	58		
Lynch	Fitzgibbon	70	103	
Legault	Leblanc & op^{t}	70		
Lebeuf	Bachant & al	78		
Leclerc	Papineau	79	100	
Leslie & al'	Dufaut	96		
Lebrun	Desjardins	102		
Leslie & al'	Lemoine dit Martin	107		
Lafaille	Mercier	111		
Langan	Johnson	123		
Laurier	Roi & al'	140		
Lussier	Russel & al'	185	226	
Lane	Sexton	191		
Labadie	Albeck & al	211		
Leblanc	Gatien & op^{t}	212	227	
Loranger	Vallant & al'	212		

Moreau	Mallet	1	4	69	73
Mc donald	Watson	5	47	52	129
Moreau	Mounsey & al	8			
McRee	Munro & al'	8	50		
Molson & al'	Handyside & al	18	51		
McLaren	Carleton & al'	30	76		
Murta	Andrés & al'	35	102		
Mc donald	Scott	37	130	225	
Major	Ermatinger	45	94	104	117
Moore	Leishman	46			
Murray	Laverty	64	69		
Mongrain	Brazeau & Cont	67			
Macnamara	Hartley	71			
Menard	Raimond & opt	74	100		
Mc Cord & al	Thompson	84			
Melivier	Moquin	88			
Moreau	Mallet	91	100	109	
Maitland & Co	Ward & opts	104			
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February Term. 1835. —

Monday 2.d February.

Pres.t —
Ch. Justice Read
Mr Justice Rolland
Mr Justice Gale —

No. 1612
Auldridge vs Dunn —

On mo. of Pltff for an alimentary allowance during the pendency of the suit —

Moreau vs Mallet.

Mr Moreau for Pltff moves to reject the plea filed by the Defend.t — as irregular, the same having been filed too late and contrary to the rules of practice — That Pltff on 30.th April last gave notice to Defend.t to plead in three days — no plea having been filed, the Pltff on the 6.th October following inscribed his Cause on the Enquête roll, for the 8.th — when he examined three Witnesses, which were cross-examined by the Defend.t — The Enquête was continued to the then next ensuing vacation — In the meantime on the 10.th Dec.r the Defend.t filed a plea, and served a copy on Pltff, which he refused to accept and proceed on his Enquête, to which an objection was taken by Defend.t — contends that Pltff could not proceed ex parte as him, while he had a plea on

Record

record – The Pltff therefore moved that the said plea should be rejected, as having been irregularly filed, and after proceedings had agt the Defndt as in default. –

Bleny for the Defndt – admits the notice to plead, and that no plea was filed until the 10th Decr but that at the time the pltff inscribed his cause for enquête, it was agreed between him & Defndt, that the latter should be allowed to file his plea at any time before the enquête was closed – that accordingly the pltff inscribed his Cause for enquête, but not ex parte agt Defndt – That before the Enquête was closed, viz on the 10th Decr the Defndt filed his plea, but the pltff not satisfied w the plea, on acct of the prescription therein alledged refused to accept it, and then inscribed his Cause for enquête ex parte agt the Defndt – To this the Defndt objected as no such inscription could be made while there was a plea on record – Defndt now therefore moved that the examination of the Wits taken by the Pltff & all the proceedings had by him since the 30th April last be set aside with Costs. –

Paget
vs
Moreau –

Mr Mondelet on behalf of the pltff presents a petition to the Court and for the reasons therein stated, prays that he may be permitted to enter an appearance on behalf of the pltff in the lieu and place of Mr Bleny, his attorney now on record, and thereupon to move that the délibéré ordered in this Cause in October last be opened, and a new & further hearing granted to the Pltff. –

Mr Bleny atty for the Pltff consented to the application provided his Costs should be paid. – Mr Bruneau, atty for Defndt objected to délibéré being opened or the Cause re-heard.

Tuesday 3d February.

Prest.—

Ch. Justice Reid
Justices Pyke Rolland & Gale

№183.
Valiquet
&
Donegani

On Defendr mo. to quash writ of Saisie Gagerie from want of regular Service—
Rule dischd on payt of service of it on Plff—

№706.
Larichelière
&
Patenaude

On Defendr mo. to discharge the inscription of this cause for Enquête on the 15 Novr last, as being premature—

Mr Moreau— the inscription was regular— the facts in issue must first be proved—

Mr Gray for Plff. contends that there ought to have been a hearing on law before going to proof—

№719
Clarke
Trias

On Defendr mo. to quash process, from want of service of a correct copy of the declaration in the Cause—

Bourbon. action for a trespass committed on a lot of land in the village of the Cascades in the Seigniory of Soulanges whereas the copy is for a trespass in the Seigniory of Vaudreuil

Hart for Plff. Defendr mo. irregular— two Defdts— & only one copy produced by Defdr—

No 1.
Auge
&
Germain
&
Germain opt

Bleuny for Pltff. contends that the opposition here made by the Oppt. is insufficient in law and ought to be dismissed. — The Pltff having obtained Judt. the grounds of opposition cannot be drawn in question —

No 2489. & 1397.
Wm Warwick
Guy Warwick &
Wm Dixon
Guy Warwick
& Lr Fortune opt

Mr Boston for Pltff moves that the moyens d'oppon filed by the Oppt be rejected as not having been filed in time. — The Oppt. had received notice to file moyens - but did not do so - Pltff moved to reject oppn — On the 10th Febr moyens came in by which Oppt merely claimed a delay to deliberate whether she would renounce to the Community or not. — The Oppt has now had the sufficient delay for this purpose, but as yet has done nothing, she has made no election as to the character she ought to assume in the Cause — She has since renounced to the Community and now makes her claim for a Douaire Coutumier — this was done without leave of the Court. and being in the nature of a new opposition, it was too late —

Mr Stanley for the Opposant — The Oppt. was never foreclosed, and his right was open to file his opposition —

Morcau
&
Mallet —

It appearing to the Court that both parties had acted irregularly in this Case — The Pltffs motion was rejected, and that of the Defendt granted without cost —

Wednesday 4th. February. —

Prest.

All the Judges. excpt Judge Pyke —

No. 583.

McDonald
Watson

On Pltff's mo. to ex. Dft's on faits & art. —

Mr Day for the Dft's — The enquête closed, and no reserve made to ex. the parte —

Mr Driscoll for Pltff — has filed his side bar Rule which precludes the foreclosure of his demand that the enquête cannot be considered as closed. —

No. 1017.

Hamel
vs
DeRouville

On Pltff's mo. to name new Arbitrators. —

Mr. Mondelet for Defendt — objects — the reference was specially made to two particular persons, one of whom is now dead, he cannot agree to any new reference to other Arbitrators —

Mr Bleury for the pltff — the reference here was in the usual form, and ought to be extended to other Arbitrators what Defendt be held to name another Arbitrator in the place of Mr Comolles, who is interested in the matters in contest. —

No. 1391.

Scott —
Falardeau
&
Lepage opt

On rule on Oppost — for a folle enchere —

Cherrier for Oppost — The Court must suspend this rule till the opposn be heard. — This is an oppn afin d'annuller, which may be made at any time as well after as before the Sale. —

№ 706
Larichelière
& Patenaude

Defendr's mo. rejected – as the issue of fact was just to be ascertained

№ 719.
Clarke
& Truax –

Defendr's mo. rejected – matters of variance must be brot forward by plea –

№ 1.
Angé
Germain
& Germain &c

Order for proof, avant-faire droit. –

Thursday 5th. February

Present.-

Ch. Just: & Justices Rolland & Gale.-

No. 845.-
Cubbane & Cauthers } On plffs mo. for an alimentary allowance
Rossiter for Defendr. states. action commenced this term - will shew by his plea, Plff not entitled to any allowance

No. 2356.
Carsuel Viau & St. Amour. Opts } On plffs mo. to have enquete closed from want of diligence
Blumy for Oppt. refers to a certificate of Illness of Wit.

No. 1821.
Hoobart & Knight } on mo. for Security for Costs —

No. 821.
Papin. & Dubord } On Defendt. mo. to suspend proceedings in this Cause until Indgt. be rendered in the Cause No 580. -

No 257
Gleason & Davis } action for monies had & received -
Nothing said. —

No. 1266.
Smith & Snail } Action for balance due for goods sold & delivd —
& dwelling wages due to Defendr —
Driscoll for Plff states that only question is as to the quantum of wages claimed by Defendr —

Boston for Defendt — refers to the evidence adduced in support of his demand, — contends that the difference of Costs on this part of the contest —

№ 1320.
Bousteads
vs
Bronsdon — } Action for work & labor.
Sexton for Defendt refers to evidence adduced by him —

№ 1578.
Moreau
&
Mounsey
&
Moreau
&
Normandin } Inst. to be entered for 2 parts only. Upon the third of the Garnt —

№ 1648.
McNee
&
Munro dat
& contra } Action for goods sold —
Moreau for Pltff — There are 3 Defendts two contest the debt, the other admits a sum of & sets up an Incidental demand — refers to the evidence adduced in support of the Pltff's demand. —
Walker for the Defendt The Defendt Father & two sons are sum'ons for a debt contracted by one of the Sons alone — The transactions between the parties have commenced in March 1830 & cont'd to 1833 — & it is evident that Mistress Munro can speak to what was sold between May 1831 & 1832 — This evidence is also controverted by other witnesses. —

№ 1936
Fabrique de Lachine
vs
Duchesne } Action en reintegrande. —
Mr Cherrier for Defendt refers to the evidence — but contends that Defendt has established his possession on the ground in dispute — at least a better possession than the Pltff — The land in question was always considered as a Vacant lot, & which was in

the possession of the public, and every person might make use of it —

№ 1576.
Flaherty
&
Forbier et al
&
Labelle opp.

On Law — on appos.

Lafontaine for appt. Oppt. condemned as Caution of Forbier — & since the rendering the Judt. the debt has been satisfied & an acquittance given by Oliff to Forbier and by it subrogates Forbier in his rights — Since that time an execution has been sued out on the same Judt. of the goods of the Appt. which has been sued out at the instance of the Defendr. the principal Debtor — The dates of the Judt. are incorrect — at least one of them, as of 18 Febr. 1825. The answer to the moyens d'appel are in the name of Forbier the principal debtor, who alledges a right to the Govt. — inasmuch as he alledges a partnership between him & the appt. — and also a subrogation of the rights of Flaherty — but such a partnership could give no such right to Defendr. — it was a defeasant right —

Mr Perrault for Defendr. Forbier, contends that he is founded in his claim —

№ 713.
The King
vs.
Divins, Curr.
&
Burton
&
Henry dat. T.B.

On motion on the part of the T. Saisis, to be allowed further time to make their declaration, under circumstances set forth in their affidavit. —

Mr Buchanan for the Plff, contends that sufficient delay has already been granted to the T. Saisis — That as to the T. Saisi. Nee — they have had the means to ascertain what they owe to the Defendr.

№ 2532
Craigmill opp.
vs.
Evans —

On Defendr. mo. for Security for Costs —

Friday 6th February.—

Orest

The Ch. Justice & Justices Rolland & Gale

—

№ 294.
Delisle
&
Auger
&
E Contra

On Plffs motion that the Auditeurs file a detailed statement of their report.—

—

№ 706.
Larocheliere
&
Palenaude

On motion of Defendt to open the Enquête.
Mr. Moreau for Plff — admits that Defendts counsel was absent at the time when the Enquête was fixed — but was present on the enquête day and refused to proceed, contending for a previous hearing on law.—
Mr Gugy for Defendt moves also that he be admitted to examine the Plff on facts & articles —
Mr Moreau objects to this, as the fact in issue is usury.—

№ 376.
Harriman
&
Barrows

Action on note —
Defts. did not appear

№ 1145
Griffis
&
Contois

Action for a quantity of boards sold —
Moreau for Defendt — Plff. ch only on 10s to sale, but states not at what price, but estimates the value at Eleven dollars & 00 — but Defendt proves a payt of £5 — to plff & for which no credit is given — Thus is evidence to shew that the wood was not at what it might be worth & not at any fixed price —
Day for Plff — credit is given to Defts for £5 — altho' without date — that the estimate put on the wood even by Defts — it will appear he has not paid for what he has rec'd —

№ 2476.
Gravel. vs Jordan

Mr Cherrier for Pltff. states, that the Intervention of Mr Mc Nider one of Defdrs Creditors has been discontinued that Judgt be now rendered in favor of Pltff —

№ 1405. & 1031
Demers & al' vs Gibson and Gibson vs Demers —

On Report of Experts —
Mr Lafontaine for Demers prays hom. of the report and also that the action of Gibson be dismissed — in consequence of the offers made by Demers to submit the estimation of the loss of passage over the land of Cicot to the opinion of Experts — this action of Gibson was wholly unnecessary. —

There is a motion to reject the report of Experts, on the principle that the Experts had refused to hear the Witnesses of the Defendt Gibson. — but as the witness Poirier had not been sworn, he was not examined by the Experts —

Mr Rossiter for Gibson — on the action of Demers vs Gibson for Debt on deed of sale, the Defendr could not set up a demand in damages, & was under the necessity of bringing the second action — Moves to reject the report of the Experts from their having refused to hear any of Defendrs witnesses the Experts have assumed the right to point out a different road for the Defendt Gibson, a thing they had no right to do — The Experts examd the promise of sale between the parties, and not the deed of sale which is the more perfect instrument upon which the action is brought —

Saturday 7th February. —

Pres.t

The Ch. Just. & Justices Rolland & Gale

No 766.

Cooke
vs
Hutchinson

} on Defend.ts mo. for a new trial —

Walker for Defend.t states grounds of application

1: Commission granted to Defend.t to ex. his witness out of the Province — returned in due time — regularly executed — and d.o objected to be heard in trial — No seal to the writ — s.d issued on the part of Pltff instead of Defend.t — the instructions not complied with — Dep.o not signed by the Wits — The seal was attached to the Commission by the different schedules being attached together by it —

The Comm.o to have been issued on the part of the ~~Def.t~~ Pltff instead of Defend.t is immaterial — & might have been corrected by the Court — inasmuch as the Pltff joined in the Commission — it was a mis-prision of the officer at most — & in fact the Com. issued in conformity to the order for this purpose —

No certificate of the Commissioners that the Wits were sworn & dep.ts regularly taken & subscribed by Wits — The Com.rs certify that the Wits were sworn — this heading applies to all the depositions This further certified by what Com.rs stated at the close where statement of the Wits ex.am.d is given —

The Com.rs did not sign the Interrog.ts & Cross-Interr.s on which the Wits were examined — No rule of Court to this effect — the mere instructions of the Counsel. —

The Wits ex.am.d only on a few of the cross-interrogatories — but this was a dispute in the Com.rs who were named as well by Pltff as with as Defend.t — & imputable to him as much as to Defend.t and Pltff ought to have applied for a new Com. had he not be satisfied. —

Mr

Mr. Day for Pltff. The Comn issued in April & was returned in July last — the publn. moved for on the day of trial — The Coms. irregularly executed — & all the Comrs are Aldermen yet all substantial matters must be required. —
There was no seal to the writ — this is necessary — the seal here is used to attach surely the different persons together —
The Pltff did not join in this Comn nor named any Com. he only furnished Cross-Interrogatories — The Com. therefore issued irregularly in the name of the pltff —
The Witn did not appear to have been sworn — there is no proof of this — the certificate to the list of Witn is not sufficient to this effect —
Interrogs not signed by the Comrs — does not find the rule of practice requires this — yet the practice always has been so —
The Comn must have been rejected had no objection been made by the Pltff. —

No. 143.
Hutchinson
Cooke —

action for balance of wages. —

Mr Day for Defdt — objects to the sufficiency of the Comn sued out by the pltff in this Cause & moves that it be rejected —
1. Coms were not sworn. —
2 Their Clerk not sworn —
The Coms are officers of the Court only in so far as they comply with the requisite of taking the oaths required. —
3 The depositions were not read over to the Witnesses — this is conformable to the Chancery practice —
That the evidence here offered by Pltff is insufficient to maintain the action — there is nothing certain as to the length or value of the plaintiffs services. —

Mr Walker for the Pltff — in answer to objections, says. there is nothing in the rules of practice that requires that all the formalities required by instructions must be strictly complied with — If substantially done it is sufficient —

The bon offered here is not as a promy note, but as an acknowledgment of the debt due for the work & labor of Defendt owed to the Plff

№ 178
Hood
vs
Campbell

action of revendication —
Grant for Plff action 176. art. Coutume —
Day for Defendt — The Plff after sale to Griffin, recd partial payt & took a note from him for the balance — By this means the Plff has vested a right of property in the goods & consequently a right to dispose of them. —

Grant in answer — the note in question was given only as a collateral security — admits payt of £5 — but frequent demands made for payt of balance — had the note been given when sale was made it wd not change case — Reg. Inv. Cons. p. 44.

№ 246
Blackwood
vs
Jones —

action of revendication

Grant for Plff — action for wine & brandy sold & delivd and seized in the hands of the Defendt. The goods were sold for Cash — The property was purchased from one Calvin a few days after for £50 — about one half its value — Plff offered to refund this sum to get back his property, & was refused — Defendt had he purchased in good faith cannot retain the goods — Sourn 176 art. Dec. 4. 5. p. 1328. 4 — & № 13 — & on 171 Dec. 23 — p. 1052. Brodeau 428. 9 — on same article — & Carbot. p. 130 — A note was given as a collateral security only, but this could be no bar to his action — cites Arrêt from Roger. p. 44. —

Mr Boston for Defendt — The Plff simply states that he was lawfully seized & possessed, not as proprietor — & the article seized the part wine № B. № 22 is not the same as that seized — It is not stated that any demand was ever made on Carbon for the article or the payt of it — nor insolvency, nor absconding — nor

any

any allegation of fraud in the Defendt — nor any offer to refund the money the Defendt paid for it —
The sale to Cater was made on 3 Novr 1832, a few days after sells the brandy to Cater — who immediately obt delivery —
Things remained in this state till 12 Novr when Cater made a selection of dry goods from Pfff — here Pffg? security — gt Cater gave him — but the dry goods were not delivered —
On the 26th Novr the wine & brandy were brot to Defts store for sale
On the 12th Decr the Saisie revendn was made —
It is in evidence that when Cater introduced himself to the Pfff he announced himself to him as a stranger — this cd have required vigilance on the part of the pfff — The wine is just sold — and a few days after another sale was made of the brandy to the P. Cater — & hence until the 12 Decr no diligence appears to have been exercised — The Pfff was bound to exercise diligence without delay — here 34 days elapsed —
Dup. 620 — In p. 132 & Jr. Comn — No 7, 20 eight days delay is considered sufficient to exclude the privilege — but the delay beyond a month is never given — 2 Bouv. Ht. 8. sec. 6. § 75 p. 689. 1 Desp. 29 — 1 Pigeau 634. 7 — 2 Rog. p. 33. —

Grant in reply — The declaration is sufficient — the Pfff was not bound to tender the money pd by Defdt for the liquors — The delay here is not considerable, nor can Defdt avail himself of it as he appears to be in bad faith. — A cash sale is according to the course of trade a sale of 3 months — The article of the Custom limits no time for following up the demand —

No 1222 & 89
Smith
Fields
Mills. oppt

Dix Law — on Exceptn to appn
Mr Boston for Pfff. The opposn was guardian of the effects seized — he is not entitled to oppose the sale of the effects — he ought to have come forward upon the Defdt. The pretensions set up here on that the goods ~~was~~ seized were pledged to the oppt —

for

for monies advanced thereon — but even in this case they were liable to rent. p. 21. 22. 4t Bail. Repr. — p 274. & 227. Poth. 2e. Pt. Louage — 176e. art. Custom — 161e & 162e & 166e art.

Mr Walker for Oppose. The oppt has not lost his right of Oppn because he did not make his claim sooner —

No. 1612
Auldridge
to
Dunn —

action en séparation de corps & de biens —
Mr Hart for the Pltff refers to the evidence in the Cause
Mr Driscoll for Defndt refers to same — contends that Pltff is not entitled to his action. —

No. 61.
Spalding
vs
McLaughlin

action for rent of a farm —
Grant for Defndt sets up plea that Defndt had purchased the farm from Pltff. But proof not made out — refers however to receipts given by Pltff for monies paid to him — but in any case Pltff has not made out his case — as Defndt has paid more than was due to Pltff —

No 1769
Sawyer
vs
Vanliet —

action for forcible entry into Pltff's house —
Borton for Pltff. refers to the evidence adduced —
over to Wednesday —

No 2250
Brewster
vs
Nichols

Action on a promissory note —
Hart for Defndt — Demand not made at the Bank on the day when it became due. —

Monday 9th February
Tuesday 10th " } Enquête days—

Wednesday 11th February.—
Prest.—
Ch. Justice Ress
Justices Pyke, Rolland & Gale.—

No 890
Laurière
&
Lacroix—

} On Plffs. mo. to reject the plea as irregular & insuffte—
Mr. Mondelet for Plff— Plea cannot be maintained, as it is in contradiction with itself—
Mr. Lacroix— The plea is sufficient in all its parts.— The mo. ought to be dismissed, as the 2d part only of the plea could be rejected & not the whole—

No 217
Robitaille
&
Costerus—

} Action en Intervenn de jouissce— en cas
Lafontaine for Deft The is no conclusion for the part of any sum of money whatever— The Plffs. conclude that the Defdt be held to délaisser the tenture, wh is irregular in this action— Poth. p. 448. 450— Hyp.— Repse. 662. & Hypte—
448. 50
Mr Cherrier of counsel for Deft— The Defdt cannot under his défense en droit raise this point— it might to have been pleaded specially.— The conclusions here altho larger than the Court may grant, yet there are part of them wh are regular in this case— the option given in this case to abandon the property is an offer made not a right demanded—

No. 889.
Fabrique de Sorel
vs
Jones —

To draw Lots

No 1710
Wellstead
vs
Scott et al

action for costs due to Plff as Att'y —
Scott for Plff. files a retraxit for £50 — asks Lists
for the balance —

Buchanan for Defendt the bill is extravagant — there
is a variance between declrn & evidence adduced — the
contract is alledged to be joint & several — not proved — if any
it was joint. —

No 2250.
Brewster
vs
Nichols —

action for note by payee ag Drawer
Scott for Plff — note payable at Bank — was not
paid. & plff was compelled to pay it —

Nye for Defendt — no notice of demand at Bank

—

No 2472
Molson dalp
vs
Handyside dal

25% Chilly —

275. 6. Roscoe —

action on note —
Griffin — only one Count in the declaration, that
note payable at the Montreal Bank, case Eyön v Russel
not proved — but note not so payable — the memdum at
foot part no part of the contract. —
Taylor for Plff —

No 2691
Willet dup
vs
Lepine —

Damages for an illegal arrest —
Mr. Lafontaine for Defendt — Plff not entitled to Damages

№ 195
Campbell
vs
Achain et al

action for work & labour in building a town boat
for Defendts

Mr Walker for Pltff – refers to the evidence adduced in
support of the demand

Mondelet for Defendt – The persons contracting were
not authorised to contract for the Defendts – three only of the
Defendts contract, who contract in the name of the partnership
There is a retrapit for a part of the demand as premature –
That action being founded partly on an award for extra
work – but the persons making the Compromis were not
authorised to submit this matter on their behalf – The
award was not signified to the parties – nor was it made
within the time – it is made in favor of one person only
here two pltffs demand the amount –

Mr Walker for Pltff – has withdrawn the part of the
demand wch was premature – & limited demand to extra
work only – This was a joint & several undertaking for
a boat in wch all the parties were concerned – The award
not deposited till 21st two days after expiration of compromis.
Cont. Pltffs rely on the facts & articles –

№ 1769
Sawyer
vs
Vanvliet

action for a voie de fait –

Walker for Defendt – The heirs of deceased Lewis had
a right of possn wt Pltff – & from them Defdt acquired the right
to a part of the house in question –

№ 1104
Campbell
vs
Achain

action on the last instalment for building a boat
Mondelet for defendt – did not appear

Thursday 12th. February. —

Pres.t —

All the Judges. —

—

№ 2268.

Smallwood q. t. v Theller — } action on penal Statute — on proceeding ex parte — Blenyss for Defendt That evidence is not sufficient But in any case nothing should be allowed to the Pltff

Chinevert Abbot val. } Mr Driscoll for the Defendt — Action for goods sold on ag.t Defendt as Copartners — The Defendt Armstrong confirms Indt to shew a partnership — but the Defendt Abbot has before pd monies to Pltff ag.t ought to have been applied to the partnership debt — but denies that Pltff has made out his case — The quantity & value of the grain furnished not proved — No proof of the two last items —

Friday 13th February.–

Prest.

all the Judges.–

№270
Bissonette
vs
Rousselle

On Pltff mo. to reject the plea as irregular–
Mr Rossiter for the Defndt –

№2532.
Craghwill
vs
Evans –

mo. to dismiss for want of Security for Costs–
Mr Grant is ready to give Security –

№934
Keith
vs
Laframboise

On law – action on note –
Mondelet for Defndt – note payable to Js Keith
for the benefit of third persons. Cowan & McKenzie
the pltff in this cause being merely the mandataire of
the payees. –
Taylor for Pltff – The action may be maintained
by the person to whose order is payable. Com. dig. Title E.
Chitty. 428 –

№1082
Hughes
vs
Hartley

on merits. –
Mr Stanley for Defndt – action for work done
according to a plan – but no sufficient proof – no plan
before the Court. –
Mr Griffin for Pltff. the Dfdt has pleaded an affirmative
plea, but has made no proof —— but Pltff evidence
is sufficient –

No 1737.
Denaut
v
Fortin & al

action for damages - Plff having been obliged to abandon the property sold to him in consequence of mortgages on it

Lafontaine for Plff, asks for monies pd by him on the purchase & to be discharged from all other obligations
The Defendt says she has renounced to the Succession of her husband before the property sold - but this is no defence, as she had presented a petition to be authorised to make the sale - The Curateur, says he can be prosecuted only as Curator - but he was named Curator 19 days after the sale, and received a part of the monies - The Indt on the saisie-arrêt goes only to the monies arising on the sale of the moveable property - The monies in the hands of the Curator are liable to restore the money he rect - The ant. produced by the Curator for his expenses is inadmissible -

Bruneau for Defdt The only Indt Plff can obtain is agt the Curator to the Vacant Succession of ~~Bourcau~~ Brousseau - but the action must be dismissed as to the widow - That the money pd by Plff was put into the hands of the Curator by the consent of Plff himself - The monies in the hands of the Curator have been levied & Indt thereon in favor of Dr Alexander - The rest of the monies in the hands of the Curator ought to be distributed under the order of this Court among the several Creditors of Brousseau -

№ 2127
Leslie et al
v.
Campré
&
Campré opp.

Opposition of Defr
On ~~rule of Defts to answer Indt~~
Mr Salmon for Defdt. The Pltffs have denaturé their Indt by accepting a note in discharge of it.

Mr Bleakley for Pltff. Pltffs have denied the facts stated in the opposition — admits the payt of £9. — on act — in support of the Opposn there is a protest filed on a note made by one McKillop in favr of Pltffs but the original note is not produced — not shewn that the Pltffs were the parties indorsing this note. — There is no evidence of the transfr of any shares in a certain steam boat — but this not proved — Poth. Obl. № 594.

№ 2512.
Bachant
v.
Malo.

action for assault & battery. —
Grant for Defr. Defdt had great provocation for the assault & entitled to small damages. —

№ 1782
Chicoine
v.
Spenard

action for divrs articles furnished to Defdt
Mr Chauveau — Defr has pleaded payt but has proved nothing beyond what has been credited to him — the only difficulty is as to a sum said to have been paid to the partnership of Chicoine & Demarteau which will not apply here — Demarteau is brought up as a witness to prove this payt but he is not a competent witness to make this proof —

Mr

Mr Blenny for Defendt – The debt was contracted with Chicoine & Dimarteau, & payts made to them were sufficient – several payts are also proved for which no credit is given – The payts made by Defendt do not correspond with the items credited by Pltff –

Mr Cherrier for Pltff, the Defendt has admitted the Plaintiffs right by pleading payment – & the proof must be admitted only, which will apply to this plea –

Saturday 14th February.—

Prs.t
All the Judges.—

No 80.—

Dom.s Rex
v.
Henry Hoyle
Jal

On Certiorari —
Mr Curran for the pros.r moves to reject the return and schedules annexed, as being papers not authentic and irregular — The action was to set aside a Proces Verbal made under the Statute of 1832 Ch. 44 — The objection is to the words effaced as will in the Procès Verbal, as in the Body of homologation — There has been an alteration made in the words in the line between the Seigniories of Dolbey & Laval — because in the copy produced by the Pros.r these words are not struck out. By art. 12. of above stat. the Commis.rs making the P. V are bound to deposit a copy of it with the Grand Voyer in which copy the above words are not struck out —

Mr Bolton for Defts — by art. 2.d Wm 4.th Ch. 44 — Com.rs authorized to make P. V — The Justices have brot forward all the original documents w.th their return all the marginal notes are paraphed by the Comm.rs that who made the P. V — The erasure complained of is merely in the title, not in the body of the P. V —

No 729.

Lussier.
v.
Boston

Mr Brunea.u for Deft — moves that the Pff's mo. to proceed Ex parte, as he had no notice to plead, nor an Exhibit of Pff filed — the notice not rec.d not being sworn to —

Mr Bleury for Pff — The cause is regularly constituted the writs ret.d and ins.d in presence of the party — the service made by a bailiff of the Inferior Court. —

№ 1642
Rutherford
vs
Merritt —

on Plff's mv. for Judgt. on verdict w. full costs —
Mr Day for Defdt the smallness of the damages ought to limit the costs accordingly. —

№ 320.
Hebert
vs
Campré

on law — Defendt did not appear
Mr Bruneau for Plff. action for interest of price of sale — Defendt alledges that there are mortgages on the property — this is not sufft. while he holds the principal in his hands —

№ 799
Patenaude
vs
Barbeau —

Exparte — no plea — action en petition d'hérédité —
Bruneau for Plff —

№ 1047
Donegani
vs
Aaron —

on law — Work by Cayer as the drawer
Hart for Defdt — a wrong form of action has been adopted — the form is on an endorsed note — a copy note was endorsed to one Denis Murray
Mr Perrault for Plff — refers to 2d. Count in the declaration, should the first be considered sufficient —

№ 1185
Goodwin
vs
Delisle dal

action for recovery of 5/ ~~for fall~~
Perrault for Plff — Defendt acknowledge to have received 7/6 from Gushey their right under a Writ of the Court of Qr Sessions — The question whether the Qr Session could set aside a positive law of 35. Geo 3. Ch. 8. s. 6. —

35 Geo. 3. Ch 8. s. 6

Continued

contends that the Dr Sessions could not set aside the law — The security given is before two Justices of the Peace, which is a duty not within the jurisdiction of the Quarter Sessions —

There is only now one Crier instead of two who have a right to any part of the 7/6 —

The Indt in the Inferior Court cannot apply here, as it is not known under what circumstances it was founded —

Mr Cherrier of Counsel for the Plff — The tariff of the Dr Sessions cannot be set up here against the law — 4. Com. Dig. p. 258 —

Mr. Mondelet for Defendt — The Stat. 35 Geo. 3 — ch. 8. obliges Tavernkeepers not only to appear before the Court but also before the Justices out of Court — The St. 41. Geo. 3. gives to Courts to make tariffs — the Dr Sessions as the Superior Court had a right to make a tariff for duties upon the Special Sittings of the Judges — The allowance here is for attending and taking recognizance & granting license 5/ — is allowed — subsequently an allowance was made to the Crier & under Crier of 2/6 was made — The 3 Geo. 4. ch. 15 — a further duty is imposed — This further const. by 9 Geo. 4. ch. 6 — Judt 30 May 1829 in the Inferior Court in pt the Crier of the Dr Sessions but their action of the Clerk of the Peace for not having received his fee on the granting licences — The Clk of the Peace was condemned — 3. Bac. Ab. Vo Extortion 550 — When a fee is voluntarily paid it cannot be re-demanded Com. Dig. Vo Extortion Letter B. — Oclesdorff Vo Extortion 363.

No 1545.

Dilsh
Prov and in

cation for libel — on law
Cherrier for Defdt — a petition was presented to the Court of Plff — but nothing appears that any investigation was ever had on the merits — That

That every man has a right to complain of the Conduct of a public officer to the authority appointing him — Rusat on Crimes. p. 212.

№ 20 59

Prelle
Archambaut
et al

action for damages — ex parte —
To see evidence —
—

№ 333

Rolland
English

action for seigneurial rights —
Mr Mondelet for Plff — concession made to James Johnson — The question here is, whether the Defendt is the proprietor so as to make him liable to this demand — Defendt is proved to have charged persons to make the roads opposite this land — from 1828 to 1830 — The Defendt examined on facts & articles produces the deed of Concession, and does not deny to have written a letter to his neighbour about drawing the line of division between them — possession is suffit art 99 — Gr. Com. on same article — Jur Gloss — 5. Henrys 180 —

Mr Stanley for Defendt — no possession was ever had by the Defendt of the lot of land, but was in the hope of obtaining a title from one James Johnson — The action has been pending for 3 years — & the proof amounts to nothing as to any enjoyment he ever had of the land —

Monday 16th. February.—

Pres.t—

All the Judges.

No 326
Hebert
Caingré
} on action for prise de Vente—
Mr. Salmon for Defend.r pleads trouble by an action en dec. V d'hyp.s ag.st him—

Mr Bruneau for Pltff—this action is only for interest of the Capital, wh. became due by the enjoyment of the land without any other obligation—

No 307.
Ex parte
Guil. T. Vallée
&
Devins appts
} Ch. Jus. declined sitting in this Cause—
Lefontaine—refers to the Case of Lacombe.—especial motion made in this cause for the payt. of the monies—

Mr. Griffin for Royal Instit.n objects to the allowance of Mr Ermatinger's claim—not being from the Dat of the Marriage Contract of Mrs Lawrie, as not being demanded by the Interv.n

No.
Jones
vs
Ledger
} On motion by Defend.r counsel to be admitted to enter an appear.ce for Defend.r after two defaults entered against him—

Mr Hart offers affidavits in support of his motion—

Driscoll for Pltff—There are no grounds to take off the two defaults ag.st the Defend.r—

No 297
Neysmith
vs
Wilkinson
} action for assault & battery.—
Mr Sexton for Defend.t—Pltff had removed at Theatre, on refusal to take it off, while God Save the King, was played—this is Customary in all public Theatres—

Febry
1828. Campbell. v Stanley — Insuff. in a similar Case —
damages assessed at 20/. —

No 74
M Laren
vs
Carlton and

action by Trustees of a Bankrupt estate of J. Parker

M. Smith for Pltff — the only point is as to a debt set up by way of compensation of the demand — this is admitted except as to a sum of £35 —

My Day for Defendt — The defendt had several claims which they are entitled to set off against the Bankrupt Estate of J. Parker — creditor was entitled for his wages against Parker as a privilege — Pardessus — Dt. pol. No 1195 — refers to no 38 — shews who is the debtor entitled to preference — Pricient p. 507. Droit comL

Mr Smith — the defendts signed the deed of composition and agreed to take a certain composition, & cannot now set up this compensation — cits. 2 D. D. vo Compensation — p. 5 — No 227. Pardessus Droit com — Rep. Merlin. vo privilege de Créance — state the nature of the privileges for wages — when the demand.
1 Toplong. ch. 2. §. 4 — Difference between old & new law — no demand for the year only entitled to his privilege — & no the plea here it is not stated that it is for the last year

No 255.
Bigly and
vs
Burroughs

action for goods sold —

Dyce for Defdt — There is no act sold — it consists of one line only — as for so much for goods sold & delivered —

No 258.
Ex parte
Geo. Albert
&
Labadie and
&
Decantz. Gart

Grace for Pltf demands confirmation of title —
There is an opposn by Labadie & wife —
and defendt called in as Garants, says. that the opposn cannot be maintained — cite by Pltf Rep. vo partage 612
1 Bourg. 890. 891. Old Denizt 662. vo Hypothèque — to prove it

it appears that where the purchase is made by a stranger, there the mortgage attaches — but not so when a co-heir purchases — Not stated in the oppn on what part of the emplacement they hold their Mortgage —

Mr Bleany for oppt. on the first objn to oppn the right of mortgage exists on the whole emplacement. Lacombe vs Hypothèque 336 — Pujon vs Liciation Lacombe vs Liciation C. Dentz. vs Hypothèque 2d objn — The transport of the propre Vente to Labadie, to this act Decent was a party & agreed to pay the amount to Oppt — The land for the Lods & Ventes is on a great part for a personal debt — the only part is what was due for Lods & Ventes before this purchase — this amounts to about £13 —

No 330

Rassette vs Gauthier

action for 2 payts of an a contract for making a bridge — On law —

Mr Cherrier for Defdr — The Pltff alledges to have contracted with a smaller number of Defendrs than those sued — That although the Sous-voyers have not made out re — cotisation of the expence of the bridge they are not therefore bound personally for that expence —

This action is founded on the Contract, & those only who are parties to it are liable —

The Defendrs ought not to be condemned personally nor solidairement —

Mr Lafontaine for Pltff — The majority of Sous-voyers were parties to the contract — & this is binding on all — art. 6. 8. 19. 22. 25. 26 of stat: 96 — Ch. 9. —

As to a personal condemnation of Defendrs — when they do not perform their duty, they ought to be personally bound for their conduct —

That the work is begun and is no excuse for the Defendrs in refusing the instalments due, altho' the work be not further advanced

The dissolution of some of the Sous-voyers is no excuse — Pltff not bound to take notice of it. —

Mr. Chrrie in reply. The Sons voyes not bound to ep the trouble & expence to make apportionments nor to answer the monies due to an estrifrenum —

№ 373
Phillipps
vs
Fielgh and

Ver Lam — action on Dec. d'hyps. —
Mr Sol. Genl. for Defdt. Part of the sopan pass. of Defts is alledged to be separate and distinct, yet he concludes agt the Defends jointly & separately — wh cannot follow —
Mr Blakely for Pltff — The contract between the Pltff and one Robuk & Cook was joint & several — & must attach to the land wherever it goes — being now in the poss. of Defts — the obligation must still attach

№ 606
Hamlin
vs
Reine
& Conten

action for money lent
Morcan for Pltff — has proved by 2 Wits — the loan of money to Defends
Henshaw for Defends There is an incidental demand and by the evidence it appears that there is a sum of £22 - owed by the Defends to the pltff

№ 626
Blache
vs
Arnaldi

action for tuition —
Peterkin for Defends This action is wrong named, it is not for tuitions, but for a portage of the property — The Defends here does not represent the Estate of the deceased in such way as to stand in this cause — By the will, the property is devised to certain legatees — agt whom this action ought to have been brought — The Exx has no seizin of the Real Estate — To substitute upon this action the Defends — is stated in the fidei-commissaire for the legatees — but this is not the case for Exx has no possession given him of the property —

Mr Lafontaine for the Pltff — The only question here is whether the Defendr possesses animo domini the property in question — The Testator did not intend to leave the profits to the legatees in question, but it was the money the produce of the property in money — The Defendr is authorized to sell the property — he is here fidei-commis for other persons — 5 Tutkin. N° 29. — The legatees immediately are not in possn of the legs — they may never accept of the legacy — the persons to whom this legacy is given are unknown & cannot be said — that Defendr is in possession of the property — he holds animo domini & the action lies against him —

The action cannot at any event be dismissed, as the Defendr should have pointed out for whom he possessed Rejsn fo 359. Vo fideicommis — Pothr. Donaun N° 335 — Profsr N° 298 — Don. Testr p. 372. tom. 6 — & Gr. Coust. Ferr part. 297 — Domat. Testament —

Mr Cherrier of Counsel for the Pltff — The persons named as legatees cannot be brought into Court — they are unknown the Defendr has not stated who were the persons who represented the Succession — This is not an ordinary hypothecation of it with — it contains the pr of alienation, and renders him a fidei-commis —

Mr Pelletier in reply for Pltff — Defendt not bound to call on the heir or legatees only when a particular legacy is demanded of him — The Defendr has no property in the Immoveable Estate & cannot be a sufficient party to any partage of the property — this property is devised to certain bodies described in the will — The Defendt is the mere mandataire of the Testator — The Defendr is not like a possessor under a lease or otherwise where he must know the person who is the proprietor & from whom he holds —

No 668
Clement
v
Seuve —

on law — action pfs seduction —

Rollin for Defendt. The declaration not suffs
there is no birth of a child — action premature

Bleny for Plff — action is well founded. —

No 758.
Snowdon
v
Kings —

action for rent — ex parte —

Hart for Defendr — Plff cannot recover — he
has made no proof of any of the facts alledged in the
declaration — The testimony of Mr Gelanders cannot be
admitted to prove the consent of Defendr to pay the rent in
question —

Grere for Plff states, that he has proved his whole
demand by several witnesses besides Gelander —
Poth. Louage. No 276. saisie for a farm rent is allowed —

No. 759
Riddell
v
Ross —

action for goods sold

Walker for Defendt sum demanded not due, only
the balance tendered is due — Defdt became bankrupt
and a composition of 10/ in the £ was agreed upon — &
in consequence Defdt paid into the hands of Plff a sum of
money on acct of this composition wch they accepted —
The present suit instituted without previous demand — &
the balance of their original demand —

Borton for Plff — the composition was accepted by
the pltffs only conditionally — he did not conduct himself
to the satisfaction of his creditors, no make the payts stipulated
It was also be wholly void if not acceded to by all the
Creditors —

Walker — a new agreemt. to accept 10/ in the £ without
consideration of the above act —

№ 816
Murta
vs
Andrés et al

action on note

Walker for Deft's — at date of note an agreement was entered into for purchase by Defts from Plff to Defts — the note in question given in part for the purchase — The Plff did execute a deed of sale of the lots in question & promised to assist Defts in procuring a Sheriff's title to the Securities of the sale, & particularly a certain Sheriff's title of Plff could be had — but no such title could be procured — it now appears that Plff is not the propr. of the whole of the lands in question & he had sold —

The replication sets out a sale by Michael Deer to Plff, and a sale by the Sheriff to Deer — The property was seized on Plff and was bought in by Deer for Plff — and next day made a conveyance a bona seizi prout of the land in question — but the Sheriff never made a title to Deer — on 12 June 1833 — ~~but~~ money pd to Sheriff — but the deed from the Sheriff to Deer was made a month after the Contract between plff & Defts so that the property is still vested in Michael Deer —

Mr. Moreau for Plff — The Defts are in possn of the property in question, have never been troubled, — they knew that the sale had been made by the Sheriff to Michael Deer & were well acquainted w/ all the circumstances

№ 913.
Cuthbert
vs
Pigeotte

action for Lods & Ventes —

Bleury for Defts — This deed in question gives no right to Lods & Ventes — it is a donation by the father & mother to the step son, the son of the woman — it is a secret arrangement in family — Pothier. ch. p. 255. 259. —

That —

That the calculation of the rents for 20 years — the donation is not rightly stated —

No. 1140
Leslie et al
v.
Yule.
&
Commissioners of Chambly Canal et al — Intervs & Hall and Intervs

On hearing on the Intervention — The parties have claim the property as having been adjudged to them as part of the property set aside for the Chambly Canal, having been adjudged to Mr Hall, on a Sale of the Defendt property —

Mr Buchanan for Interv. party — The whole farm of Yule was adjudged to Mr Hall — but was not divested out of Yule till that Sale — 31. 3 Geo. 4. ch. 31. 29. 10. 13 & 16 Sec. grant right to Comrs to purchase lands for the purpose of the Canal — Hall became the proprietor under the Sheriff's sale and entitled to the monies —

Mr Taylor for Plff. In 1822 Plff. obtd. Judt. as the Defendt in 1831. Comrs of Ch. Canal named Experts to estimate lands of the proprietors where the Canal was to pass and the land in question was then estimated, the monies ~~was paid~~ remained in the hands of the Commissioners and an attachment was in consequence made in their hands — This ~~transfer~~ must be considered as a Sale by Yule to the Comrs & the possn they had in consequence — the act authorizes the sale from Yule thus made — The Interv property was afterwards deeded ~~to the~~ ~~part of~~ property, as belonging to Yule, ~~after the sale~~ nearly three years after the Sale made by Yule to the Commissioners. — The only thing ~~was~~ wanting was a deed of Sale from the D Yule to the Commissioners. —

— Buchanan — Yule was no party to the estimation of the Experts — he was never put en demeure to grant a title and the property was never devested ~~for~~ out of Yule —

Tuesday 17th February.—

Pres.—

All the Judges.—

No 2534.
McDonald. vs Wm Scott.

On mo. of Pltff to close the enquête.—
Scott for Defend. The Defend. had not exam. all his witnesses.— no entry in the enquête book.—

No 1170
Scott dal. vs Laverty & McGoran qc.

On oppos.
Mr Boston refers to evidence in support of his oppn
Mr Driscoll for Pltff — no proof of the copartnership nor ought the copartnership to cover the property in qst the Defend has an interest from the payt of the separate debt — Gow. 181 — partnership effects may be seized & sold for a particular debt of one partner —
Mr Boston for Oppos. the property seized belong to the Copartnership — this has been proved

No 1394
Lebrun vs Desjardins

Cetron for damages — for illegal seizure
Mr C. Bruneau for Pltff — Illegal seizure & sale of Pltff's effects after payt of the Judgt. agt him. — has objected to parol testimony in proof of the value thereof on Judgt — The writings produced cannot be admitted. unless as an act setting aside the Judt altogether —
Lafontaine for Defend. — altho Defend. prosecuted Pltff in the Inferior Court, yet ~~it was for~~ he owed him a larger sum, but the Defend restrained his demand to the competency of the Inferior Court, but this cannot be considered as a remise of the surplus. —

Thurs

There was an error as to the sum of the expenses of the witness, not marked on the taxation of Costs in the spon— The Pltff agreed to pay the difference he owed to the Defendr— beyond the competency of the Inferior Court—

No 1603
Kerr dab
v
Massue dal

action for ~~prescription~~ work & labor &c
Lafontaine for Defendr— action as Three Defendrs— not proved who were the proprietors of the Steam boat in question— nor is the partnership of the Defendrs proved— action cannot be maintained as the Defendrs solidairement— The Pltff having discontinued his demand as one of the Defendrs & cannot recover as the others jointly & severally and it is an acknowledgment of having rect satisfaction for the part & share of that Defendr— Pothr. Obl. No 265. 272— inasmuchas Pltff has become unable to transfer his right to the other Defendrs— There is no proof that the debt has was contracted by the partnership—

Mr Smith for Pltff— The dis continuance may be made as any of the Defendrs at any time— & as all are bound jointly and severally, it does not alter the right of Pltff Merlin quest. Dt. Vo Societé p. 13— the individual of a Societé en Commandite, is bound, in his own name, but when he contracts for the general concern or for their benefit, the general concern is bound—

No 1501.
Rossiter
v
Larrault
Larrault. opt
v
Masson— Intvs

An opposition de novo.—
Mr Pelletier for Intvs party— has come in to contest the opposition of the Defendr—
Mr Salmon for Oppost— opposition made on account of the illigal & irregular sale & adjudication of the lot No 2 made by the Sheriff, in consequence of which the oppost has been greatly injured— There being too short time allowed for

the

the said adjudication —

Olivier & Bellanger. & Bellanger ppt Delisguy Intervt

Pallier for Intervt party — as to the time allowed by the Sheriff for the adjudication of property, nothing is determined — how the time appeared to be sufficient. —

No 1653.

Pothier v Provandie

action for rent on lease — for damages for want of repairs — and for cutting down timber on the property leased

Mr Buchanan for Plff — the only point in contest is as to the growing timber — the parties agreed to name Experts to ascertain what timber the Defendr had cut and applied to his own use — The first report values the wood cut at £14 — this report was set aside, and a second report is made by which they estimate the value of the wood at £14 — but that he had applied it to mend the fences — this latter part was not within the competence of the Experts —

Mr Perrault for Defendr — admits the rent, but as to the other objects of demand he did not admit them Experts were named to enquire into the quantity of wood that had been cut down for the particular use of the Defendr — The Experts ascertain by their last report that the wood was cut down & employed in mending the fences which were frequently carried away, — this was a Cas fortuit for which the tenant is not answerable — Merlin 391. vo Dommages — Defendr not bound for pillage of the fences nor for the repairs occasioned thereby —

Domat 166. 185. 97.

Buchanan in reply — Calling down timber to repair fences, when cheaper timber might be had —

No 1903
Ferrier
vs
Perrault

Action for Note & for goods sold
Day for Defendt. Defendt called his Creditors together & proposed terms with them - deed was passed & 10/. in £ was agreed to - & in consequence a note was given & endorsed by Mr Perrault Senr. & Defendt now demands that the Judt be entered up accordingly - The Defendt Pltff contends that there was a private arrangement between him & Mr Perrault Senr to induce him to accept this composition - That this the Defendt has nothing to do with - moves to reject verbal evidence in this respect -

Mr Rossiter for Pltff - When the Pltff took the Note in question, the father of the Defendt agreed to give a right of sous-garantie in a partition wall between Pltff & Perrault Senr, but finding afterwards that Perrault Senr having refused to grant the right he promised, has rendered the whole transaction void and the Pltff is entitled to his whole demand -

No 2313
Skakel
vs
Somerville

Action for monies pd & advanced -
Taylor for the pltff - Pltff has proved his case & demands Judgt -
Mr Smith for Defendt - Only question of law now to be determined is reserved by the last Interlocutor - Which is the want of an Inventory being made by the Pltff of the property that had come under his administration - the issue raised on this is what is to be now considered in point of law - The evidence now adduced is a certain amount of monies received and expended and the balance struck - It

appears

appears that there is a sum of £30 — rec'd by Pltff not accounted for also a sum of £20 — besides a commission charged — these charges allow Pltff not entitled to recover them
Rep.re 793. v.o Julien. The Curator not entitled to any charge or allowance for his management — The Defend.t sent in an account in gl.o he charged nothing for his personal trouble — & it was only in consequence of the refusal to pay his acct that a new charge of Commission was made — But no proper account having been rendered by the Pltff as Curator — nor offer the pieces justificatives to enable Defend.t to establish the balance between them — nor has the Pltff at any time authenticated his acct by his oath — Jousse. art. 8. of 29. tit — requires this — The Pltff here should he even establish a balance in his favor, still ought to have neither interest nor Costs — Denisz. v.o Curateur — Merlin. 105. 113. 133. 334. —
There being no Inventory ~~having been~~ made, there is no legal evidence of the possess.n of the property, nor what has become of it — it may now be in the possession of the Pltff — Defend.t ought not at all events to pay interest or Costs
Julien. N.o 49. Curator not entitled to any thing for his gestion
1 Argou. 116 — Merlin 336 — interest due only after demand & act.e audited
1 Despeisses. pp. 593. 604.5 —

Mr Taylor for Pltff. The pltff not bound to make an Inventory — at the time of the interdiction, Defend.t had a daughter who remained in the house w.t Defd.t — and in charge of the property — The weakness of the Defend.t was a temporary aberration, & an Inventory not necessary — Ferrier Intelth — not necessary when the expense would consume the whole Boiwot — An act.e was rendered on the demand of a Mr Dreyer the authorized agent of the Defend.t who acknowledged the correctness of the act.e except as to a £20 — & a sum of £30 — and the charge for the board of Defend.t Dem.r — The ext.t N.o 79 — states the letter in gl.o the £30 is mentioned — that the Defend.t there on a State of abnegation —

The arrest in litem if necessary, ought to be submitted to the pltff

Merlin Question de Saisie 2 Basnage p. 244 — 4 Jour. Aud. 140. — p167. Arrêts de Frenental — Ferr. tit. 87. 8. 9. Mulsk 134 —

No 2349
Blanchard
vs
Decorgnes
&
Intervenants

Action on a transport for a prise de Vente — Bruneau for Pltff — The Pltff has established his demand

Ames
vs
Love
and
Lewis
vs
Love
&
Schuyler opt

Borton for Pltff, contends that opposition should be dismissed with Costs

Grant for Oppos — The horses claimed were not seized in the poss^n. of the Defend^t and have been proved to belong to the Oppos^t —

No 93
Bowen
vs
Ayer —

action petitoire. —

Mr Buchanan for Pltff. action founded on 2 deeds exhs. No. 3. 24 — being sale of lots in Farnham to Pltff — a confession of Jud^t by late Ayer — on q^t the three lots of land now in question were stated as the property on q^t Exon was to issue — before the Sale D^r Ayer died — the Sheriff at instance of Defend^t proceeded to sell these lands — The lot No 44 now claimed was thus sold & bo^t in by Defend^t — This could not destroy the Pltff^s title — the Sheriff acted beyond his authority & for the particular benefit of the Defend^t Nouv. Den. Decret D' Inn. 55. No 7 —

Mr Pelletier for Defend^t — Defend^t has denied the facts alleged — The late D. Ayer purchased the lots in question under deeds from — ~~Upwards~~ possessed some until

the

tion of the Deed — the pltff never had any possession of them — the possn by the late D. Ayer joined to his title although subsequent to that of pltff, will still vest the property in him — Poth. Vente. N° 319 —

The Defendr on the death of his father had a right to consent to the sale of these lots — and we must presume that the Sheriff proceeded under the authority of his writ The sale & adjudication by the Sheriff was made upon a legal seizure upon D. Ayer who was in possession of the lots — The title being now in third persons under a sale by Defdt to them even before this action was instituted the pltffs title to these lands cannot now be declared whatever his right may be as to that of third persons not parties to this suit —

Buchanan in reply — There is no proof that Daniel Ayer ever had any possession in any of these lots at the time of the sale by the Sheriff

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N° 2345

Bagg dtg
Robreau
Duplessis

action pro dente —

Mr. Lafontaine for Defendt — no proof of the demand — The Defendt has not had possession Pltff moves to be permitted to file an authentic copy of the deed on which the action is brought

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N° 796

Stone
vs
Fleming

action on promy Note — Plea no value —

Buchanan for Defdt — note given for a horse which was not sound — and he tendered him back before the 9 days — Cas ridhibitoire. No. Dig. p. 274 —

Grant for Pltff contends that the evidence is in favor of the Pltff —

№ 1374

Wm Brabury &c
vs
Hoyle —

action for goods sold & deld —

Grant for Pltff — 3 Starkie 1070 — not necessary to prove a partnership by very strong evidence — 3 Chitty on Com. Law p. 232. 3 —

Walker for Defd. There is no sufficient proof of partnership —

41. 6. 7

That in case the action can be maintained aff. Litthall There are deductions for interest & Commissions which must be deducted amounting to £41. 6. 7 on all —

Grant in reply — There is an agreement to pay interest from the time of payt —

№ 894.

Joseph, &c.
vs
Cuthbert &c

on Law —

Buchanan for Defd — action on an obligation of one Heineman — Defds appointed joint-Curators to Estate of Dr Stein — one of the Curators is dead & the action cannot be maintained aff. ~~on~~ the Survivors alone — Poth. Mandat. № 102

Mr Hart for Pltff. The Curators here are not to be assimilated to Mandataries — one only may — administer the Estate — 1 Instit. p. 382 The Defds here is not the person to raise this exception, he has no interest — 1 Dufresne 550 — Merlin Rep. p. 300 —

Wednesday 18th February

Prest.

All the Judges. —

Cooke. — vs Hutchinson

On Pltff mo. for Judgt on the Verdict with full Costs. —

Mr Walker for Defdt — opposes the motion — contending that under the circumstances the lowest possible Costs ought to be given. —

No. 1316
Major vs Ermatinger

On Law —

Action for damages in disturbing her possession of a house during her lease —

Mr Scott for Defendt has pleaded an exception à la forme the declaration is insufficient, it is of no specific character if it be considered as an action of the tenant agt the landlord it is not founded — if of a different kind it is in vice de fait —

Mr Boston for Pltff — this exception must be dismissed it is irregular — if the Decln does not contain enough, it was a defense au fond en droit that was proper, but not an exception à la forme. —

No 405.
Crooks vs Botterill & Bouslear vs Botterill
Harbey opt & Turton Penn opt Beckett opt

Mr. McCord for Harbey —

Mr Walker for Penn. —

The facts are admitted, but privilege of Penn contested —

Mr J. Day — for Beckett — claims a privilege as a workman in making the brooches — 1 Pigeau 681. 3 —

Mr Cord. cites — 139. Denisart Vo Gages
Poth. p. 83. proc. Civ. — no privilege after article delivered over

№ 407
Wm Smith & Gagnon ofs & Mr Hart ofs

on Petn for Ratification of title —
Mr Carol for Petr — admits appr of Gagnon — for £147 —
as to Hart — he has made no surrender — that he be collocated for the balance —
David for Hart — Not bound to take his money by instalments as stipulated in the Deed of sale —

№ 98.
Moore dup & Leishman

action for a subscription to a troupe de Ser
Griffin for Defdt — The action cannot be maintained on this act not being made double — & Pothier p 456. № 30 The action should have been brt on the Contract and not on the act —

Mr Scott for Pltff — The act is suffe to maintain the action — the signing of the Defdt & the presence of the Notaries rendered it complete — Vt Doutre Droit Merlin Pothier & Cruchet — say the act is not null, but forms a Commencement de preuve par ecrit — Dunn v Duchenay in 1828 —

№ 574
Stephenson — & Brooks Curr —

action of acct — on law
Hart for Pltff —
Walker for Defdt — action by Pltff as father of late Stephenson — Defdt has pleaded, that an action was brt against him by certain Comrs of Bankrupt or heir in England — The Pltff in the Cause is an uncertificated bankrupt — and cannot maintain this action —

Hart for Pltff — The bankrupt is entitled to an account the question decided last Term — The other plea cannot be maintained — there is a prescription as it — it was instituted in 1817 — and since 1818 no proceedings have been had —

№ 583
M^c Donald
vs
Watson —

action for wages of Pltff's son — & for damages in having dismissed the son without Cause —

Driscoll for Pltff — The Defend^rs have alledged mis-conduct in the servant, but the facts proved do not amount to any misconduct. — M^r Driscoll on closing moved that the facts & articles submitted to M^r Watson one of the Defend^rs may be taken pro confessis, as he had not appeared to answer —

M^r Walker for Defd^rs objected to the mo. as he had rec^d no notice of it — this was over-ruled — he then moved that the rule for the hearing of the Cause should be discharged that he might have an opportunity of shewing the absence of Watson in England — this also was over-ruled — He then applied to be permitted to offer to the Court an affidavit to shew Watson's absence — the Court allowed this, saving to determine thereon. — M^r Walker proceeded to the defence of the action — and observed that the conduct of the servant was so improper and irregular as not to merit any wages —

M^r Driscoll was heard in reply. —

№ 932
David
Leblanc
&
Laplante op^t

Op^n oppos^n afin d'annuller —

M^r Moreau for Oppos^t — the effects seized belonged to the oppos^t and had been lent to the Defend^t — which had been previously sold by Defend^t to the oppos^t —

Mondelet for Pltff — This is a fraudulent transaction

№ 2283
Rembert
vs
Portras ux^r

action en rescision — on law —

M^r Cherrier — Act is not a donation, but for a valuable consideration & because Stamps — N. Denz. v^o Conquet. §. 20.

Mr Grant for Pltff. all donations are liable to be rescinded except those made in favor of marriage The Defendt was bound to maintain the Pltff — in which he has failed. — Rule

№ 2492
Leslie &c
vs
Dufaut

action for Seizure rights — on lease
Mr Chevrier for Defendt — offers Consents during his own possession — not bound for others. Boutard p. 86. № 182 &c. — Defendt having sold the land —
Mr. Blakely for Pltff — action is founded — The Defendt was bound to notify the sale to the Pltff as Seigneur — That Pltff is entitled to them Lods even for the small sum offered by the Defendt —

№ 37
Naughton
vs
Moore —

action for wages —
Disch'd

№ 1836
Bellingham
vs
Dorwin &al

Action on note — Sents —
Hart for Defendt — Decln insuff. first count is by payee of the drawer & indorser — 2d count — is of no specific form — 3d. count, is also extraordinary — The note exhibited shews an indorsement first by Pltff then Dorwin's signature & then that of Pltff — This is no aval, nor is there any count in the declaration for it. — But by the evidence this could be no aval — as to Wallbridge no notice of protest, as he never had any effects at St Lawrence Suburbs —

Mr

Mr Walker for Pltff. The evidence shews the nature of the transaction — & the error committed — The action can be maintained on the first or second Count in the decln —

Thursday 19th February.—
Prest
All the Judges—

№ 1648. McNee— vs Munro & al & E contra	Judgt for a part of the demand Incidental demand dismissed
№ 2476 Gravel vs Jordan—	Judgt de Separation de biens.—
№ 1405 & 1031 Demers & al vs Gibson— and Gibson vs Demers & al	Judgt in these Causes united, homologating the Procès verbal of the Experts—
№ 143 Hutchinson vs Cook—	Action dismissed— Com. Rogr not regularly executed
№ 178. Hood vs Campbell—	Action dismissed
№ 246 Blackwood vs Jones—	Action dismissed
№ 1222 Smith.— vs Field Mots. oppt	Exception to Oppos. dismissed— Dest. Rolland

№ 2472 Molson et al vs Handyside	Judgt for Plff on note – but not allows charges of protest
№ Chenevert vs Abbott et al	Judgt
№ 934 Keith vs Laframboise	Exception dismissed, as pleads to the note, and not to the action –
№ 326 Hebert vs Camyré	Defend to make proof of the trouble complained of
№ 1074 Donegani vs Aaron –	Exception dismissed, being made to all the Counts in the declaration, while one of them was suffl
№ 397 Neysmith vs Wilkinson	Action for assault on plff & taking off his hat forcibly in the Theatre – Judgt £2.10 – costs as in Infer. Court.
№ 373 Phillips vs Fulleyton et al	Action dismissed. –

Friday 20th February. —

Pres.t

All the Judges

Leslie & al
vs
Camyré
Camyré Opp.t

Opposition dismissed —

No 1653
Poshier
vs
Provendier

Judgt for Plff, as well for the rent as for the damages in cutting down trees on the farm

No 2492
Leslie & al
vs
Dufault

Defend.t admitted to make proof of his exceptions —

Mc donell
vs
Watson & al

On Defendants motion to discharge the Delibere in this Cause and to admit the Defend.t Watson to prove that at the time of the service of the faits & art. in this cause he was absent from this Country & therefore that the default entered against him ought to be discharged

Mr Walker for Defendant filed affidavits in support of his motion —

Mr Driscoll for the Plff objected to the motion as inadmissible and wholly irregular. —

April Term. 1835.—

Wednesday 1st. April.—

Present

The Ch. Justice & Justices Roland & Gale.—

No 770.

Harrison
vs
Nickless

On Pltf's mo. that Defendt shew cause why a Ca. Sa. should not issue in satisfaction of the Judt rendered in this Cause—

Mr Grant for the Defendt— The Defendt was not a trader — no discussion of Defendt's property—

Mr Bleakley for Pltf — it is admitted by Defendt that he was a trader— on seizure of Defendt's effects the Landlord made an opposition by which he claimed security for the whole of the rent due on the lease —

No 940

Barling Lamb
vs
Miller —

On Pltf's mo. for a new trial on the grounds stated in the motion. —

Mr Lord for Pltf — The action for defamation —

cites, Archbold's Practice 253. 254 —

Mr Driscol for Defendt — grounds insufficient —

№ 1323.
Kidd vs
Dease

on Law
Burton for Plff – a plea put in to get over the Term
Driscoll for Defndt nothg said –

Paget
&
Moreau
&
DeBlenry

On desaveu filed by the Plff. of the acts and proceedings had in the Cause by Mr Deblenry his advocate –

Mr. Mondelet for the plff. moved that the desaveu should be declared good and sufficient, and that the conclusions thereof should be granted –

Mr Deblenry, considers the said desaveu as insufficient, as he had a right as conducting the proceedings to take such course as he saw fit, without any particular authority from his client –

Thursday 2d April 1835.

Pres.

The Ch. Justice & Justices Rolland & Gale

No 1270
Laurier
Laurier

M. Rollin for Pltff moves to close the enquête —

M. Mondelet for Defdr contends he is entitled to make a verbal proof of his Incidental demand, as there is sufficient in the confession of the Defdrs answers to the faits & entitles to admit this evidence —

M. Rollin objects to the evidence offered — & that there is no admission of the Defdr which can give room to this proof nor can it be divided —

No 1083
Gagnon
Pinsonnault

on Law — Defdr not appearing, Pltff moves that the exception of law be dismissed —

Hebert
Canniff

On pltff's motion that the enquête in this cause be declared closed — the Defdr not having proceeded on the last enquête day to adduce any evidence —

M. Salmon for Defdr — consents that Pltff close his enquête, but that a day be given to Defdr to prove the faits alledged by him —

M. C. Bruneau. The Pltff had no evidence to adduce and gave notice to Defdr thereof & that he should proceed immediately to adduce his evidence —

Friday 3d April.

Pres.t

Ch. Justice & Justices Pyke Rolland & Gale

No. 321.
Quin
vs
Doyle —

mon to ex. Defend.r on fait & art. —

Blakeley — no rule taken nor served —
2d, The Enquete closed last Vacation without reserve
right to ex. pltff on fait & articles —
3d, The Cause is inscribed for hearing to morrow —

Mr. Rossin for Pltff — he has taken a rule at the same
The Enquete is not closed — no notice of any inscription
of the Cause —

No. 294.
Delisle
vs
Augé
& Contra

On Pltffs. mon. to set aside Report of Auditors —

Mr Mc Cord for Pltff — The Auditors have assumed
the powers of arbitrators — as they have rejected
a part of the one of the accounts & admitted others —
the principal acts of the Pltff are under letters A. B. C —
the whole of these acts contained in 3 columns should have
been credited to the Pltff — but the Auditors have rejected
one of these — & this third ought to have been credited as
rec.d at same time with the others sums credited in the
two columns —
2. Is a promy note in favor of Defend.r signed by A. M.
Delisle, rel. which Pltff has nothing to do —

Mr Perrault for Defendr — The Auditors have proceeded on the documents laid before them —

The 3 columns are different ofm diffr objects — the first Col. has not been admitted, being for fines — which were paid at Quebec as appd by the receipts — these fines are claimed only for a certain period — where his initials are marked he makes no claim. —

27 June 1832, the parties settled acts — when Pltff gave Defr a bon for £12. — for so much overpaid him on settlemt of accts — also the exhs. marked M — an act. Court between the parties, in which are the fines in question in the first column which the Auditors have rejected —

As to the note referred — it is a receipt — for monies pd by Mr Augé — to A. W. Dodds, when Pltff was at Quebec

Rapr Martin vs Esprit — N. 6 — as to power of Court to order a further explanation of their report —

The Pltffs affidavit refers to the first columns in question & was ~~referred~~ submitted to the Auditors. —

In a kind of protest made by the Pltff, he again refers to another ground — an objection to the fees Auditor —

A distinction to be made here between Master & Servant where the Master has all the books in his own possession & directs the whole, & all the receipts given were in those books —

The accts produced by Defendr — are correct — not so those produced by Pltff —

Mr McCord in answer — The report of the Auditors is motivé — The Defendr rect the fines, which he rect the Costs & Crown fees — There never was a settlement of accts between the parties —

Saturday 4th April.—

Prest

The Ch. Justice & Justices Pyke, Rolland & Gale

№ 445.
Arnoldi
Ps. Brunéau

on plffs mo. for reference to Experts on demand for medical attendance — the services being admitted —

Mr Cherrier for Defendr no proof established in proof of demand —

№ 697.
Quin
Doyle —

action on promy note —

Rossiter for Defendr no valuable consideration was given for the note, Plff having delivd a puncheon of Whiskey instead of Rum — this has been proved by a distiller who examined the Spirits —

Starkie — if there was deceit the Defendr should have tendered back — 2 Taunt: p. 2 — no proof of any fraud —

№ 811
Lalande
Ranzenne

action for Loan — Law —

Mr Bibaud — plea of usury —

Cherrier for Plff. the plea inadmissible — the Defendr admits that he recd the amount stipulated in the obligation — but says there was another note given under the obligation, which is not now in Suit,

&

and agt. which only the plea of usury can apply -

Mr Bibaud in reply -

No 1373
Ac Voyer
vs
Rolland

action en interruption de prescription & for a lite mouvel -

Mr Bruneau for Plff. The Plffs. made an acte of Constitution to one Ferrar - last of him - land sold to Sir John Johnson subject to same Constitut - he was the proprietor of the Seigniory of Monnoir wh is now possessed by the Defendt -

The Defendt contends that there is no hypothegue created on the said Seigniory, but only on the land purchased by Sir J. Johnson - but the Vente judiciaire creates a general mortgage on all the property of the purchaser - Lacombe. Vo Hypothegue -

Mondelet for the Defendt The adjudication by the Sheriff gives no general mortgage on all the property of the purchaser - the opposn here made a charge on the property sold, can attach only to that property - see 1 Pigeau 731 - as to the extent of such an opposn The mortgage here claimed is the tacit 731
mortgage - There was contract here between the parties and none presumed in law beyond the particular property in question - The Sheriff's vote is like a lite mouvel which cannot extend beyond the particular property for wh the lite is given - Dencyt. Vo Tit. Mouvel. No. 8. 2 10 - a person who interferes in a succession does not give a mortgage wh a Cour had on that Succn on her own property - The Cur by Law - does not obtain hypoth. on the property of a third person until he has declared the Trust exercising upon him -
1 Dalp. 696 - Babet Ch. 2. Ch. 5. p. 150

2. Pigeau 521. 522 —

Another question — does the adjudication here create a mortgage — in the hitherto given by the Sheriff — It 1 Persil. 347 — adjudication creates no mortgage — 17 Tutbiu by Troplong. p. 172. —

In case of folle enchere, there could be no mortgage for the deficiency of the sale — nor on a caution judiciaire 1. Persil. p. 339. 340. —

339.

Mortgages are generally created in the acts creating them on a presumption that such was the intention of the parties, but here such presumption cannot hold — there could be no such intention on the purchaser of a property by adjudication —

distinction between hyps. generals & specials — here there could be only a special hypothèque — & the Offr cannot abandon the special mortgage to prosecute the general — 2. Lafaverie. p. 57.

62 b. Rép.ᵗᵒ v° Hyp.ᵉˢ — Dispensation must be had where the special mortgage is stipulated — Poth. 437. Hyp.ᵒ —

Here the mortgage is stipulated only on the particular property sold by the Sheriff, & according to the terms of the ~~mortgage~~ oppos.ⁿ — & this in order to preserve the right of mortgage the Creditor had on the particular property sold — The Contract of the adjudicataire & Lastrie was only in regard of this property, nothing more was demanded nor intended —

As to the hypoth. on the Biens Judiciaires — it is reasonable the person taking the bail should bind his property, as he cannot bind the Estate he hires — There is besides here a Contract — The marriage contract Contract creates a mortgage — so Loisel — where there is no Contract, but for there the Law creates the Mortgage —

He who interferes in a Succession, creates no Hypothèque

on

on his own property, even where he makes an Inventory

Mr Brumeau for Pltff — The contract with Justice is equally binding as a Judt — and vests a Hypo. — So also a Caution judicium — cites case of Workwith. v Farley — he who purchases by decret may sell — may dela pidate the property & without fear of Mortgage the interest of a Creditor would suffer —

There was no obligation to discuss the particular property here, as by the art. of the Custom. the possessor

2. Gr. Com. p. 62

Contends that on a folle enchere, there is a mortgage on all the property of the purchaser —

№ 2467.
Sabourin
vs
Sepiot

on re-hearing —

Mr Bibeau for Pltff, considers that this was no donation which could not be revoked — The Ordce of 1731, 1747 is not in force in this Country and cannot apply —

That the opinions of Mr Ricard, Despeisses, Ferrier & others are that such a deed may be revoked — Merlin. Vo Revocation de Substitution — Boutaric, Instit. Just. p. 202 — Ricard. Don. № 879 — 873. 874 — Lacombe Vo Donation. 221 — Despeisses des contrat. p. 1. tit. 4. p. 461 — Ferr. Dic — Ric: Substit. ch 4. № 137. 138 — Merlin. Vo Revocation. p. 712 à 715 —

1 vol. folio

Mr Pelletier for Defendt — The question, whether the art 4 Donation, — whether revocation can be made when the Donation is other than gratuite — here he considers the deed as a family transaction — regulating the Succession of the father — how it is uncertain to what extent the donation is gratuitous — it is evident it was made to favor the grand children of the Donor —

Monday 6th April.

Pres.
all the Judges

No. 987
Archambault
Devos & Jolicoeur
& Deblois mis en cause

On Pltff's mo. for a folle enchere — or that adjudicataire deposit the money —

Mr Gosselin for adjudicataire states, that during the Saisie ~~wood~~ the property purchased had been detériorated by the Defendt —

Mr Charrier for Pltff — this no reason for not paying the money — Account fo. 302. § 12 —

cont. Jugmt —

Beaumont
vs
Berry —

mo. to obtain a writ of possession —

Auger
vs
Germain
& Germain opt

On merits of oppos.

Mr Mondelet — Pltff obtained Judt by default it was erroneous, & all Pltff had a right to demand was that Defendt should discharge the land of all mortgages — The land was sold & adjudged to one Drolet as the land of the Pltff — so that Defendt has been dispossessed of the land & is still liable to the amount of the Judt —

Mr Gosselin for Pltff — The Judt is regular, & the defence the Defendt might have then set up, cannot now be admitted —

№1060
Dorwin
vs
Spears

Action on note —

Scott for Defendt has pleaded a dilatory plea that delay was given to Defendt on valuable consideration for pay.t — Plff has been exam.d on facts & art. as to the pay.t of a certain bon & the delay to be given — his answers here may be divided on the principle of there being a contrary proof in the Cause — 1 Pigeau 244. — Poth. Obl. № 919. —

244 —

Mr Js Day for Plff. No term of paym.t has been proved

Ex parte — on Petition of J. Coutlee dal —

On Petition for a Certiorari —

Mr Mondelet for Commissioners — This Court cannot interfere in this case, it not being within their Jurisdiction The ord.e of 31. Geo. 3. ch. 6 — The power which was vested in the Intendant in regard of the proceedings for the building of Churches, being now vested in the Governor The Indication act of 34 Geo. 3. ch. 6. § 7 in the powers given to the Judges, reserves this right as to the building of Churches —

The parties are not entitled to a Certiorari in this Case — There is no ground here stated upon which a Certiorari can be granted —

Mr Gosselin for Pets — The grounds stated in the petition are sufficient —

Tuesday 7th April 1835.—

Pres.
All the Judges.—

No 83
Murray
v.
Laverty —

On motion to unite this cause with another cause between the parties. — Disch.

No 1449.
Crookes
v.
Arnott

On mo. for an absolute presumption
Quest.— whether Costs are due as of right

No 641
Aubertin dep.
v.
Mazere
&
Gosden, Tute &c.

Oppos. not appears — Opp. dismissed

No 1048.
Potvin
v.
Thompson

over to 14th

No 1890
Globensky
&
Marié
&
Berthelet dal
Interv.

On the Intervention — hearing ex parte —
M.Bender for Interv. party — Mr Dumont called a meeting of his creditors & transferred to them a quantity of 1200 bushels of wheat, & in case he failed the Crs. might prosecute their rights of him. — Mr Dumont failed — & the Interv. party obt. a Decr. of them & seized the Manuscript of the Sentence — to this seizure an oppos. was made by the Dumonts Serv. of a lease of the revenues of the Seigniory for 9 years — This lease was set

aside

aside by Judt. of Court of 12 June 1833 — & the pltff proceeded to execute his Judt — and in the mean time Wm Dumont transferred the same revenue to the Pltff but ~~afterwards~~ loans the Son of Dumont made a transfer of the rights he held under the Lease from his father to the Pltff who bro't his action thereupon agt the Defendt This transfer of the ~~Son's~~ loans could be of no avail, and the rights of the ~~Pltff~~ Intervenant must therefore prevail. —

— —

No 267.
Cuvillier
Owston

On Defendt's mo. to quash the writ. —
Hart for Pltff. — The declaration does not correspond with the affidavit in the Cause. — but are separate & distinct grounds of action. —
The affidavit sets forth a debt of £49. 10 — partly for house rent, and for assessment thereon — The declaration sets out a demand for rent of two different houses — different from that stated in the affidavit —
Harrison Digest. 1 East. 334 — 1 affidavit. — 1 H7 Bl. 10 154. 4 Taunt. 1 Wilson 231 — 1 Tidd. 294 — Id. 188. —
Petersdorff — p. 285. 4 p. 480 Eng. Edit — Covenant.

M. Pelletier for the Pltff. The affidavit is sufficient in the principal point — any variance now pretended is of no moment

Wednesday 8th April.

Prest.

All the Judges.

No 302
Wm Clarke
Talon de Lestrame

on Defends mo. for delay to plead —

No. 105
Rea —
Carter

Pltff asks for Jugt. default & C. W

No 1118
Jones
Ledger —

On Law
Mr Driscoll. Pltff has Demurred to plea — minority no sufficient plea — altho' not given for reasons — no reason alleged —
Hart for Defends the plea is good & sufficient — he has alleged not only minority, but also that no value was given for it —

No 2724
Truchon
Gauthier

Action on a deed of sale — merits —
Mr Rodier for Pltff — Land sold for 4300 —
Rec. 600 — on pass) act — D. was to pay to Degrau 1600 — on 13
of same month — afterwards 1100 to Pltff on same month
1000 on 8 May 1833 — Defdt. says by receipt of 8 Jan
1832 for 2200 — he produces a receipt from Degrau for 1000
on pltff for 1600 — being a Comptes de rente — The

The Defendt makes a double implor, as the sum of 1600ll Labo 600l. pt were to become due, were included in the sum of 2200l — as payts made en anticipation — There is no probability that Defendt ~~should~~ who had a delay to pay and without interest, should have paid before the term — Plff has stated the manner in which the payments were made by his Replication — demands the sum stated in his Declaration, except as to 305l — pd by Defendt to Archambault —

Mr Lafontaine for Defendt — There are two Dowers due on the land —

Purchase 8 May 1832 — pd 600l — 1600l payable 13 Nov — to Sejeun — to whom he pd 1030l — 570l — remd due on this on 8 Augt 1832 1100 — payable 1 Augt 1833 — The receipt of 8 June 1832 is the objectionable receipt in opposition of Plff but this receipt is plain & shews that all was then paid — The words anticipation de payement, can refer only to such payts made altho' not due, & not to payts formerly made which had become due — —

600
305. 10
2200
1600
4705.

No 1597

Mongrain
&
Brazeau
&
Et contra

} on deed of Exchange — Merits

Mondelet for Defendt — has paid £200 & some pounds There is a balance due as demanded, but contends they are entitled to retain this money in their hands until they shall have obtd security for certain rights of dower due to the wife of the Plff by her Marriage Contract — As to the Incidental demand, he admits it has not been made out — As the ratification of title of Defendt has obtained, this does not purge rights not yet due — & there is a sum of £33 — due to one Lalonde, subject to which the ratification was granted —

Mr. Peltier for Pltff — The Debt due to Lalonde was payable by 200^{l}. yearly — agrees that as this sum shall become due the Defendt shall retain it in his hands — if not pd by Pltff — as to the rights of the wife, by Stat. 9 Geo. 4. Ch. 20. No 7. & 8 — The Ratification clears the land of this Mortgage — the only reserve is as to Dower —

No 784.

Bowman
vs
Berry —

9 Geo. 4. Ch 15.

Mrs. for a writ of possession, on Petition

Boulton for Pltff — rent payable Monthly and 9 months are due —

Stanley for the Defendt — The Stat: to which the Petitioner refers to support his present application 9 Geo. 4. Ch. 15. is expired, and a different course of proceeding has been established by a latter Statute —

Thursday 9th April. —

Pres.t

All the Judges.

№ 83
Murray
~
Laverty
&
№ 938
Murray
~
Laverty

On motion of ~~Pltff~~ Defdt to unite these Causes —

Mr Perrault for Pltff. in Cause № 938 — considers an inconvenience would arise, by uniting the Causes as Pltff would be delayed in obtaining Judgt —

Mr. McDonell of Counsel for Pltff in Cause № 83 — considers the proceedings subsequently sued out was but a new incident in the original Cause —

№ 1308
Moreau
+
Mallet —

On Defendrs motion to set aside proceedings —

Bleury for Defendt — Defendr has pleaded prescription — Pltff insisted for Enquete before hearing on this plea — wits were heard — ~~this~~ was unnecessary if the prescription was founded — Objects also to the nature of the evidence adduced, in regard of the objects for which the Note of hand in the Cause was given — Objects also to several Interrogatories proposed to the Defendt

Mr Moreau for Pltff — a hearing in law was unnecessary — the Defendr pleads prescription by which he admits the Pltffs action — and by another plea he denies being indebted in the sum demanded — But Pltff contends there was no prescription, as the last article

in

in the act. is within the year and day — The Pltff herein has pleaded interruption of prescription — That Pltff is entitled to ex. Defendr on the fait & art. proposed to him, to establish his demand —

No 86
Lynch
&
Fitzgibbon

on merits — action for defamation —
Mr Grant for Defendr — action frivolous & no damages proved — equal bad words used towards Defendr by Pltff —
Rossiter for Pltff, contends a strong case has been made out.

No 466
Lynch
&
Fitzgibbon

on merits — action for defamation —
Similar case as the preceding —

No 1072
Legault
&
Leblanc
&
Leblanc opsd

On opposition of Defendr on merits —
Mr Lafontaine for Oppost — Lndt for £45 — for balance on act of sale to Defendr — The Defendr however had paid this money, as he can now shew by Receipts in Produces — & by Lndt dues pd to the Seigniors — The Pltff was bound to deliver up the titles to the lands, wh he has never done — The Pltff has agreed to deduct the monies pd by Defendr to the Seigniors —
Mr Mondelet for Pltff — No reason why the Defendr did not appear & defend the action — The Pltff however offers to deduct the sum of 400 pd by Defendr to the Seigniors — also 1/8 —

No 1264
Begly & Co
vs
Thompson

Action for goods sold at Auction to Defendt —
Day for Defendt — The goods were sold to one Cooley, & not to the Defendt — One of the clerks of the Pltff says that Defendt was present when goods were thus adjudged — but the Defendt has brot up — Pinconneau the persons acting as Crier at the time states that at the time Defendt gave notice, that the bid given by Cooley was not on his Defendts act —
No evidence to controvert a collateral fact on cross-exam[n] can be admitted to controvert or discredit the Wits — 1. Starkie. p. 134 — 2 Camps. 637 — Moves to reject the testimony to this effect —
Rossiter for Pltff — Pinconneau not a credible Wits is controverted by several Wits — That goods were adjudged on the bid of Cooley as the agent of Defendt & in his presence —

No 2160
Macnamara
vs
Hartley —

On arbitration report — Submitted —

No 777
Bleau
vs
Ainsse —

On report of arbitrators
Chauveau for Pltff — admits some deductions to be made — and demands Judt wt Costs —
Lafontaine — objects to the allowance of Costs of Experts being granted —

No 1225
Russel & Co
v
Ekemberg dat

Action for goods sold & delivered

Mr Smith for Plffs — The transactions are of long standing and the value now claimed — the only objection is as to the interest which is included in the different transactions — but the course of dealing between the parties was that interest was charged in all the accounts rendered, and never objected to but on the contrary payments made by the party on such accounts — Bills Dis. p. Interest — 4 Taunt - p. 297 — Ph. Ev. p. 122 — 1 ~~Taunt~~ Camp. 52 — in note — 3 Camps. 466 — Master. Lunt. Dict — v. Compte Court. 534 —

Mr Mondelet for Defendt — There was never any settlement of acts between Plffs & the late Ranger he was an ignorant man, & could write his name but in other respects he could neither read nor write — That the only acts the late Ranger ~~was~~ ever received were the bills of parcels of the different purchases in which no interest was charged — The acts were all delivd in English — and there is no proof that Ranger ever undertook to pay interest —
refers to case of Dunlop & Dunlop - adjudged in appeal in pt interest was allowed by this Court, but was set aside in appeal —

Friday 10th April
Saturday 11th do } Enquete days

Monday 13th April.
Prest
All the Judges.

No 1222 & No 89
D. Smith
&
Fields & als
&
Mills & al opps

Mr Boston for Pltff prays for a supplementary Judt on his action for house rent — on the conclusions taken in the declaration —
Mr Day for Defts — the pltff not entitled to this motion from any conclusions contained in his declaration in this Cause, nor by the Judt rendered —

No 776
Blanchard
&
Bryly & al

on defendr mo. to discharge
Mr Day for Pltff objects — as the proof demanded may be made in town —

No 1308
Moreau
&
Mallette

on Mr Bleury's mo. to rescind order of inscription on merits, as the Enquete has not been closed —

No 656
Burt
&
Bethelot

on report — quest. of costs —
Dept says costs ought to be demanded

No. 513.

Duff
v.
Crombie

on demurrer —

Rossiter for Defendt — The action does not lie as there was usury in the Contract between the parties —

Menard
v.
Raymond
&
Raymond opp.

On opposition of Defendt —

Mondelet for Oppt — The Exon irregular as said out on the personal fiat of Pltff — That the Costs have not been taxed — and further that Pltff ought to answer on fact & articles —

O'Kinny for Pltff — The Pltff had a right to take a fiat in his own name — There were no Costs to be taxed — they were already taxed —

No. 1048.

Polvin
v.
Thompson

action on contract for building a Chimney —

Mr Gray for Pltff — delay given to Defendt. to adduce evidence during term — none adduced — Pltff contends his proof is sufft. to maintain his action —

№ 2038 № 2045. № 1682

J. Walsh Ecuire
v
Franc. W. Desrivieres & al'
Sam. Gerrard & al. T. S
and
Jas. M'Gill Desrivieres Intervt
& opposant

On Petition of James M'Gill Desrivieres one of the Ordinary Legatees of the late Jas. M'Gill, praying for the reasons therein stated that a Curator be appointed to the Succession par benefice d'Inventaire, of the late Francis Desrivieres father of the Defendrs who have accepted and now hold the said Succession par benefice d'Inventaire, that such Curator be authorized to manage the said Estate for the greater advantage of the parties interested, and inasmuch as the heirs of the said late Franc Desrivieres are not agreed among themselves as to the management of the said Estate —

The Petition for the Petitioner cited an acte de notorieté of 28 March 1713, to shew that a Curator may be appointed to a Benefice d'Inventaire. Denizart acte de Notoriété, p. 350 —

The Coheirs sous benefice d'Inventaire & Creditors of the Estate were heard on the petition, none of whom objected thereto, but would give no specific consent —

No 2691. Willet & ux vs Lepine	Judgt for Plff £5 - damages & costs under £25
No 2349. Blanchard vs Ducoigne Pourbe. Intervs	Judgt for Plff
No 1140. Irvine Leslie & Co Inc vs Que Comms of Chambly Canal - T.S. & Hatt - Intervs	Judgt dismissing Intervention and adjudging the monies attached to the plffs
No 1782 Chicoine vs Prenard	Judgt for Plff
No 796 Salva Stone Rob.t vs Fleming	Judgt for Plff
No 73. McLaren & ab vs Carlton & al	Judgt for Plffs
No 1903 Ferrier vs Perrault	Action dismissed
No 1374 Bradbury & ab vs Hoyle & al	Judgt for Plffs

No 940 Burlingham v Millar —	Rule Nisi for new Trial discharged
No 1386 Billingham & al v Dorwin & al	Judg for Plffs
No 1. Auger v St Germain & St Germain opp	Opposition dismissed
No 770 Harrison v Nickless	Rule Nisi for Ca. Sa — discharged
No 1710 Wellstead v Scott & al	Judg for Plff
No 1885. & No 1942. Chas Tait v Cantara & others & Cautions	In two Causes united — Judg for Plff
No 1737. Denaud v Forton. Jun & Barbeau. Curr	Action dismissed as Forton, & also as Barbeau personally — & Judg as Barbeau as Curator —

Tuesday 14th. April.—

Prest.
All the Judges

Ex parte
Rassette — on Petn for Relief
and
Divers ofopts —
and
Rassette — in garantie
vs
Lafaivre —
and
Rossette — Intervt —

Mr Prefontaine prays to be permitted to intervene on the part of the Petr. Rassette —
Object of the Petr is to be enable to deposit the money, the amount of the price — and out of it to be collocated for the amount of a claim he has upon the property sold — & this from the terms of the contract — such stipulation is equal to an opposition —

Mr Charrier for Oppost. There is no necessity for this Intervention as it comes too late — the Petr appears to have pd a part of his debt by the Judt — & cannot now claim that right —

Rep. v. 673. Vo Hyp. — Dict. Merlin. Vo Stipulation pour autrui p. 38.

No 1089
Lebouf & Laflamme
vs
Bachant
& Cuvillier dit Intervs

Action en separation de biens —
Mr Mondelet for Plff asks Judt — moves to reject certain parts of the evidence adduced on the part of Intervt parties

Mr Peltier for the Intervt parties, contests the Demande — they allege collusion between the Plff & Defendt — and the Defendt having favored some of

his

his Creditors to others. and also the threats of the Defendt to his Creditors if they did not accept his propositions of arrangement he would take steps to put himself beyond their reach

2 Pigeau 180

Mondelet for Plff – demand of plff here is favorable as there is no bankrupt law in this Country to protect the honest Debtor – This demand was favorably received in France – 2 Pigeau 180 – here the rights of the woman are in peril – and the Creditors have shewn nothing to prevent the Plff from this action – their evidence comes even in support of her demand –

No 1235
Leclerc
&
Papineau

on Law hearing de novo –

Mr Lafontaine for Defdt – The drawer & Endorser live at Chambly – the holder at Montreal – protest made to the drawer, and a copy of protest sent by post to the Indorser – if there were several indorsers & some of them at a great distance & the protest was notified to the most distant within the 10 days – in that case the first indorser might be deprived of his remedy – here the protest ought to have been notified to the Indorser as well as to the Drawer – In England there is a distinction between notice of dishonor & signification of protest – Here Defendt never received the protest, nor notice – The protest in the cause, does not shew that any copy of protest was sent or notified to the the Indorser –

Mr Greene for Plff – The law says that notice of the protest shall be sent – Chitty 582. as to time & mode of giving notice – a letter sent by post office sufficient Heyd. vs Bell. 146 – 2 Ph. Ev. 19. 20 –

No 61
Proceedings
Clerken —

action on lease for rent — on law —

Mr Scott — Defences au fond en droit, a plea exception en droit have been filed —

Mr Bleny for Defend. on defences au fond en droit — in the declaration it is not stated that Plff had intermarried with the woman at whom the lease was made — nor is it stated that Defend. was entered into possession of the property —

Mr Scott in reply — the deed is sufficient, the capacity of the husband in this case is not denied —

Mr Bleny for Defend. on Pleas & exceps — that the late Hughes never having taken possess. of the house & premises, the Defends as Caution cannot be bound for the rent —

Mr Scott in reply — the death of party cannot affect the right of the Plff — No 637. Poth. Obl — No 317. Loysel —

No 80
The King
v
Hoyle et al

Mr Charron for Pr. the Justices have not returned the original petition which was laid before the ~~Justices~~ Commissioner when the homologation of the P. V. was demanded — The Pr. has moved to set aside the return as the proceedings as irregular — The reasons are stated in the motion to homologation made, — There are 2 p. V. before the Court both of wh are originals — by Stat. 2 Wm 4. Ch. 44 — by wh. 3 copies of P. V. are required — one to Gr. Voyer — one to the Justice & third to remain with the Commissioner — There is an evident contradiction between the copy deposited w. the Gr. Voyer & that left w. the Justice as different & erasures & changes have been made in that which has been homologated —

That there are merits of falsification apparent by the Evid. of homologation, as it refers to a process Verbal refers to a road in the Seigniory of Delery & not in the line between the Seigniories —

The P. V. has not been rendered according to the formalities required by Law —

That the P. V. states to have been drawn by Stat the Comr — it was drawn by the Surveyor, and not by the Commissioner —

That there was no plan accompanying the P. V. as required by Law — none of the names of the proprietors are marked on the plan — no limits are specified on it.

The direction of the P. V. is directly opposite to that established by the plan —

Mr Boston for Depd. The road here established is of much importance on account of the public convenience established by it — The Court ought not to require the strictest regularity in a Comr — who is illiterate & obliged to act — & he is authorised to call in the assistance of a Surveyor in making his P. V. — The objections here are frivolous — some words are obliterated, but the same P. V. wh. was before the Justices is now before the Court — the words effaced are of no importance — The Comr has done his duty in all respects The general description of the extent of the road necessarily comprehends all the lands upon that road to its full extent. —

The variance complained of in the different copies of the P. V. — is of no consequence here — and merely in description on the back, and it refers to a matter that is immaterial. —

Torrance dat
v
Campbell

ments

Mr Frobus for Pltff. action on two letters of guaranty to deliver goods to one Campbell The first dated 23 July 1833 — 2d 9th Novr. 1833 — The evidence shows that before 2d letter Robt C. Campbell owed pltffs £433. 3. The balce due at 2d letter was £492 1366 — The goods subsequently furnished had not become due — after payts on first guarantee there remained due £92 — 141
Fell on guarantee p. 111 — The Creditor may apply payts to subsequent transactions and hold the guarantor state bound —

Mr Buchanan for Defendt —

The first letter of guarantee is not binding — the name of the principal debtor is omitted in it — by law all the parties to the contract must be stated on the face of the contract — 1. Bos. Pul. p. 254. — Fell. p. 45. 47 — same principle is applied to mercantile guarantees —

But if valid — in the ant. Cont. not only goods are charged; but also money transactions. — The guarantee can apply only to goods —

The 2d guarantee is on the desguentive words on it — it is called a Continuing guarantee — but is only to be extended to the specific sum of £1000 — no receipts are produced for payts made to Pltffs — by the credit ant from 6th Sept. 1833 to 4 April 1834. The credits are £1234. 14. 4 — & the subsequent credits £98. 10. 8 — On the debit side are 3 items wh. have no relation to the guarantee, for acceptances of drafts exclusively of an accommodation nature — The object of the guarantee was therefore discharged — All the

the analogous cases, this is no continuing guarantee, as certain peculiar terms are used where this is intended according to the course of Cases in England —

2. Marsh & Jel. p. 18 — The words, all sum or sums of money that at any time or times — a strong case here — held to be no continuing guarantee — 2 Chitty Rep. 205 — Bowtell v Turner — 1 Crompton & Meeson Rep. 48. 9 Vol. London Mag.

The Cases of guarantee have words of any kind. 12 East. 227. 2 Camps. 413 — 3 Camps. 220 — 6 Bing. p. 244 — Hargreave v Smee 3 Barnw & Ald. p. 693 — Mobille vs Hayden — no continuing guarantee —

7. Bells Com. p. 373 — distinctions as to limited & continuing guarantee

565.67 Thus doctrine of imputation will therefore apply Poth. Nos 565. 566. & 567 — Obl. — here no specific pays made by the Debtor & he is entitled now to make them — Kames on Eq. 1 Vol. part 2 Sec. 4 — Obl. No 97. — interpretation in favor of the party bound

Mr Fisher for Pltff

As to first objn — as to the person in favor of whom the guarantee is made — but the proof here is made out to shew that the guarantee applies to the person of Son of Defendt — Pelt. p. 46 — The Exceptn besides admit the entire Contract —

Cooper Eq. Vol Part. Adler Ex. No 11. 12 — or considered as a stipulation Obl. No 223. 3 Tullier

Mason v Pritchard — 107. Fell — held a subsisting guarantee — even were the words at any time were obliterated the objn would still be same — The case from 6. Bing — is also in favor of Pltff — case also similar as for Defts Son —

A letter of guarantee is to be strictly construed as the Debtor & liberally in favor of the Creditor — it is generally drawn by the party giving it without presence of the Creditor — Tullier Law. 3. Lt. 3. No 323. & seq. — Mason v Pritchard — conformable to same authority — By English cases Fell 241 — the Creditor has right of imputation of pays —

The authorities from Pothier are on general principles and not to Mercantile transactions —

2, Bell's Dic. p. 298 — monies applied to debt the least secured —

That according to Poth. the debt due is to be preferred to the debt not due — here $192 remained due — here there are not two debts — there is but one —

The Defendt knew the two were dealings between the Plff. This Son & his agreement was made under this impression 3 Dalloz au Code Civil. p. 251 — 2 Parfait Negociant. 4th parte — case said to be joint —

Buchanan in answer no connexion between Defdt & the first account of Plff & the guaranty in question — 3 Pardessus 1218 — as to the effect of cautionment — the guaranty here like a loan —

No 457

Ex parte Duvernet } Comments of Opposn
Elliott opt } Pettier for Petr — the opposn here claims the property, which cannot be maintained here — as the law does not extend to this object —

Mr Day for the Opposn — has an interest that the title of the Petr be not made contrary to the rights & interest of the Opport. who is the proprietor & possessor The claim of the Petr. is a disturbance to opposts right —

Repos. to Complaints. p. 296 —

296

No 1069.

McCord dat } action for arrears of rents —
Thompson } Day for Defdt pleads payt & refers to a receipt for all rents foncier up to 1834. & the present sum was due at the time — One

One witness only bot up to prove that present sum was not included in this receipt — This inadmissible and insufficient. —
Puff for Resp. vs Dattaan —

Kidd. —
vs
McConnell
&
Ashton opp.
&
Donaldson Intervs

On opposition afin d'annuller —
Mr Day for oppot — claims the articles seized as his property, and being at the time in the possn of the oppot —
It is contended that the transfer to the Oppot was fraudulent — But it has not been proved that the Defendr was insolvent — the only proof is a deed whereby her creditors agree to give Defendt time to pay —

Mr Boston for Puff — This is an evident fraud on the part of these parties to deprive the Pltffs of their rights — The deed by which oppot purch and the goods is on the face of it insufficient, as it did not specify the goods sold — a schedule was afterwards irregularly affixed at the enquete — The Defendr however at a subsequent period calls together her creditors & pressed by them, she made over to them a part of the very goods she had already sold to Oppt who knew it as soon soon as Defendr —

No 1678
Cartier
&
Menard

On Hypothecary action — Rejet of Exhibit —
Opp. Mondelet for Pltff — only question as to the proof of Improvements —

No 1936

Fabrique de Lachine
to
Duchesne }

On action possessoire - Report of Surveyor
Mr. Mondelet for Pltff. on taking the
report on the whole it will appear that
the Defendt had made no act of possession on the
property in question — This added to the evidence already
made in the Cause shews the right of the pltff — particularly
as it appears that the Defendt had all the property to
which she was entitled by her titles. —

Mr Cherrier for Defendt. considers there is nothing
additional to enable the Pltff to recover in consequence
of the Surveyors report —

Wednesday 15th April.

Prest

All the Judges. —

Shand
vs
Andrés dal
&
Andrés dal ofs

On Law — on opposition of Defds
Mr Moncan for Pltff. Defndts allege they had given notice of an appeal in time to arrest the Exon, but it was given 2 days after after it had issued — Exon issued on the 2d was lodged wt Sheriff on 3d the notice was given on the 2d — That Security was not regularly given —
Mr Ivl Day —

No 37
Naughton
vs
Moore —

Action for wages — ments
Mr Day for Defndt Jot Moor died — partnership was dissolved — & David Moor contd the business — action for work for David Moor in pt is included all the time Pltff worked in name of Jot & D. Moor — Pltff compensation —
Pltffs evidence is vague — does not establish his demand
The Defndt has proved the wages allowed to Pltff and also the articles which had been furnished to the Pltff which amounts to more than the wages claimed & proved —
Mr Rossiter for Pltff contends that his claim has been sufficiently established —

No 950
Hetrick
vs
Tasse

action on deed of Sale — prise de Vente —
Griffin for Pltff — Defdt has set up a matter already adjudged upon —
Lafontaine for Defdt — The same points not pleaded as in the former action — The Defndts allege that Defendt took

10 Vol. N.

took possession of the land at the end of 60 acres from the River Desmo & to the extent of the 100 acres from that point — and that Pluff never intended to sell nor the Defendr to purchase beyond the extent of 100 acres

No 962
Stevens dak
Rocan & Burton

Action en transport des prix de Vente
Laisnay for Defendr not bound to pay more to Pluff than to the original Creditor — has shewn that balance he owes is about 230$ — while Pluff pretends that Defendr is personally bound, in consequence of his acceptance of the Debt transferred — That Defr has pd a part of his debt in consequence of an action brt agt him en Delai d'hyps — Can be carry the money to the Pltff who lives at a distance —

No ~~992~~ 1391-
Chs Wards
Valiquette

Action for work & labor
Pinault for Defdr Pluff has transferred his right to another & cannot maintain his action —

No. 1288.
Mativier
Mcguin
Mcguin opt

On merits of opposition —
Mr C. Bruneau for Oppt oppn founded on a transport of an obligation due by Pluff which he now demands may be deducted from the Pltffs demand — Question now as to Costs, as the debt has been admitted — especially as Defendr could not make any tender in this case —
Mondelet for Pluff The Defendr ought to have tendered what he owed —

№ 2365.
Bond
v.
McKenzie
&
Webster

action for work and labor —
Mr I. Day for Pltff — Pltff can make out by witness
Mr Griffin for Defdt — The question here, is whether the
Pltff was to have 10/ ~~p day~~ or 12/6 — On 20 Oct. Ehff withdrew
the order made — he had not completed then completed more
than 4 months — The order made on principle of 10/ p day —
for the number of days Pltff worked — The person with whom
the contract was made has not been brot. forward by pltff
as a wit. — There is no proof of the other items on the act
beyond the number of days of work —

№ 493. & № 200
Greene dal
v.
McLeod dals
&
Jackson o/p.

On appos.n of Jackson — on law
Mr I. Day for Pltff — Question as to the priority
of the oppos.t — as to costs of attachment — not due,
the goods of the Debtor assigned to oppt. not specified — as the
schedule was not then made out.

Mr. Driscoll for Oppt. — assignment of effects to oppos.ts
after which pltff sued out an attachment upon same effects
in view of obtaining a preference — but in this case the Pltffs
are not entitled to any preference for their costs, nor priority for
their debt. —

Bigly. Knox & Co
v.
McKellips dal
&
Anderson dal

On appos.n — merits
Boston for oppts. — The property seized was in
the hands of the Oppos.ts as proprietors — to whom
the Defdt. had formerly been a clerk, but had
been dismissed — 1 Pepan 727 —

Mr Rossiter for Pltff. The oppos.ts has shewn no title
to the property seized — property shewn by Defdt. to be his property
as to the 200 Cords of fire wood — They are not claimed & must be
sold —

Ryan 208

No 2669.
Harbeck
&
Papineau

En séparation de corps & de biens —

Mr Charron for Plff — cites Ryan 208 — This Defendt living wt another woman — as to the accord between the parties, altho' not valide yet may be homologated — Ryan 212. —

No 2458
Lepissier
&
Chevrier —

~~on rapport de Experts —~~

No 664
Rutherford
&
Delorme —
&
E contra
—

on Report of arbitrators —

Mr Cord for Plff. action for monies advanced — Incidental demand — reference to arbitrators — Small balance reported in favor of the Plff — But on looking at the evidence taken before the arbitrators the great object of the demand has not been considered by the arbitrators —

Mr Perrault for Defendt — The memorandums taken by the arbitrators cannot be considered by the Court — only question here is as to the Costs particularly as to the Incidental demand which ought to be allowed to him as it has been the means of reducing the Plffs demand to the small sum of £16. —

№ 1308.-

Moreau. Mallette

Mr Moreau for Pltff — action for £28. for medical attendance & £10 for promissory note — The act for medical attendce is from Sept. 1831 to 1833 — The Defendt has pleaded prescription & that the note was given as a settlement de compte — The Pltff has denied the matter in the plea — & interruption of prescription & that note was given for other consideration than a settlement of act — The pltff has been compelled to prove his whole demand — in consequence of the plea — Several witnesses have been examined to prove Pltff's attendance on Defdt & his family — There is no prescription — action commenced on April 1834 — & a great part of Pltffs act is in April 1833 — but as it was for the same malady for which the services of Pltff were given, there can be no prescription of the latter part of the demand comes within the year

Mr Bleury for Defendt — The question here whether there be prescription or the proof adduced is sufficient proof interruption — contends that verbal testimony was inadmissible — either as interruption of prescription or as to the nature of the note given by the Defendt —

Thursday 16th April. —

Pres.
All the Judges. —

№ 38 & № 83.
Murray
Lavelle — } Dismd.

№ 1744 —
Woodhouse
v
Earlom — } Error for Plff moves to amend
objected to by Mr McDonell —

№ 475
Betts
v
Jones — } Action for money due on Contract — Wentworth Bleakley for Plff — agreement for constructing the machinery of a grist Mill — & it was stipulated that in case of difference of opinion that Experts should be named to settle them — Defendt refused to name Expert — cause has gone to Enquête — & many witnesses examined — Depos to the evidence adduced — Several Witnesses have been exam. on part of Defendt —

Mr Sexton for Defendt The Plff has not shewn that he has completed all the objects which he was bound by his contract — The Defendt delayed the completing the work contrary to his agreement — The work done was imperfectly & unskilfully done — all the extra work Plff charges, he was bound to do by this contract — Many of the Witnesses are workmen who depend upon the result of the action for their payment — The instructions from Plff to some of his men to patch up the work any way — Plff never superintended the work himself —

Mr McCord of counsel for the Plff in reply — states that this matter must be left to the decision of experts —

№ 681
Jones
vs
Bellsval

Action of damages for not having completed the Mill according to Contract —

Mr Lopton for Plff — his damages can clearly ascertained refers to the evidence adduced —

№ 2246.
Bourassa
vs
Faille —

action en bornage — on law

Mr Brunean for Defdr — The Judt of the Inferior Court being coram non Judice, could not homologate the P. V — a requete Civile presented to the Court — new Survey ordered — but that Survey not complete — The Inferior Court has since declared itself incompetent to take further cognizance of the case —

Mr Charrin for Plff — It has not been decided that the Court had not jurisdiction in regard of drawing the line of division between neighbours, this did not regard the right of property — But the Court has declared itself incompetent only in regard of the Requete Civile —

Mr Brunean — in reply, contends The original Judgment must be considered ~~is~~ insufficient, otherwise the same Court could have taken cognizance of the Requete Civile. —

№ 735.
Ilsley
vs
Davis
&
E contra

On Report of arbitrators

Mr Mondelet for Defdr. moves that report be set aside, or at least sent back to the arbitrators —

Brunean

Pyke

Because a third was named without necessity, and he has joined w^th the Defend^ts & for other reasons stated on the motion —

M^r Buchanan for Pl^ff — It is presumed there must have been some disagreement before a third Arbitrator was called in & operated by consent of parties — Defts own affidavit not alone sufficient — nor that of the Arbitrator who has signed the report —

N^o 1316. Major vs Ermatinger

} on Law

M^r Scott for Defend^ts has filed a defence au fond en droit — as Pl^ff shews that pl^ff had been in poss^n of the premises for sometime, but not for the year & day, nor under any lease — action de voie de fait cannot be maintained without shewing this poss^n — Rip^n v^s Voie de fait — N. Pothier 175 p^s N^o 134. 137

M^r Boston for Pl^ff — the principle contended for cannot be maintained —

N^o 1871 Cotterill — Furniss & al

} action for goods sold and delivered —

M^c Cord for Def^ts begin action a tender made by what Defend^ts owe, only a difference of £14 — between the parties — the difference is the amount p^d for freight & storage of the goods at York — y^t Defend^ts were bound to pay before they could get the goods — this they were not bound to pay — the pl^ffs witness says that Defends promised to pay this difference — & per the oath of Def^t contradicts this by his evidence — refers to a paper he

drew

drew at the time, which is produced — as being the agreement then made between the parties —

Mr Buchanan for Pltff — It is for the Court to determine on the credibility of the 2 Witnesses — Ryan is presumed to be more familiar with the transactions as speaks positively Deacon is not so positive — There might have been other communications between the parties at which Deacon was not present — The memdm made out by Deacon is incomplete, it was dictated by Defdt — and the words wanting the Court cannot tell what they were — The taking poss.n of the goods & paying the Storage without any notice to Pltffs agent, was taking them under all the charges —

That sum claimed ought to have been claimed by a demand in reconvention —

N° 2032
Bank of Montreal
Cartier —

action for an Instalment on obligation —

Mr Buchanan for Defdt action on assignment of a part of an obligation for £2000 — given by Cartier to his Copartners — but Cuvillier & Co.y were bound to keep Defdt harmless of all claims of the Partnership dealings wt Cuvillier & Co.y — set out a bond & obligation given by Cuvillier & Co.y to Gerrard & transferred to the Bank of which the Defdt claims to be considered, as liable as one Copartnership of Cuvillier & Co.y — & on q.e Defdt requires dismissal —

Griffin — The Defendt was aware that this obligt was due & transferable — when he contracted this obligt — but he does not shew that he has been troubled on acct of this debt so transferred by Gerrard to Pltff — That the

Debt

debt demanded will go in extinguishment of the debt due by Carrelhac & Co. to the Bank —

No. 2173.
Forsyth, Cur
vs
Levesque

action for Lods & Ventes on Sale & Retrocession
Mr Buchanan for Pltff. refers to the deed of retrocession, which is made on the principle that purchaser was unable to pay — In France this contract bore Lods & Ventes, [illegible] C. Dessf. p. Lods Ventes. No 87.

No 2492
Leslie dat
vs
Default

action for Lods & Ventes &c on Law —
Mr Cherrier for Defendt. The question whether Defendt. is bound to pay all the arrears due ~~upon~~ since the ~~his possession~~ Sale made by him — Bordans &c. No 18. 19. 20. 22. —
The action is of the Defendt. personally, & not hypothecarily as the Defendt for these arrears — 2 Ferr. 218. 9e Com. No 1.
Court — whether the Court can maintain jurisdiction on the small sum demanded —
Bleakley for Pltff. consider Defendt. bound for the sum demanded as the sale he made of the Land was never notified to Pltff. nor any mutation of possession —

No 966. & No 478
DeRouville
vs
Meunier
and
Chaffers
vs
Meunier
&
Meunier Oppt

On opposition of Meunier —
Mr Terroux for Chaffers contends that the Opposition cannot be maintained —
Mr Perrault for Oppt. contends that no copy of the P. V. of Saisie was ~~not~~ signified to him — contends also that the Land is wrong described — the Criées not regularly made — besides other defects — That

as

as the proceedings not being regular & Defendt not having had regular notice, he could not ascertain whether the land was sold or not—

№1237
Snowdon
vs
Roberts

On Law — action on obligations —

Mr Grant for Defendt — has pleaded usury — only question whether the plea be sufficient so as to be allowed to make proof of it — The money was lent on getting an usurious interest, as Defendt was to pay a certain quantity of 124 bushels of wheat in January after but this was a mere contrivance to avoid a stipulation of an usurious contract —

Mr Green for Pltff — This a common mercantile transaction — the stipulation that Defendt should pay the highest price for the Wheat if not delivered at the time stipulated —

№1539
Benoit
vs
Guilbault
&
Benoit opt

Action for value of a cowpe de bois —

Mr Green for Pltff — alledges Opposit has no interest in the cowpe de bois, he having sold his right to another — at all events is entitled only to what he pd for the cowpe de bois

Mondelet for oppost — The Pltff cannot avail himself of the right of another in answering to this opposition his having sold to another is not for the Pltff to object. he has no interest in the question —

№ 290
Turcot
vs
Hurtubise

Action to be indemnified for a charge on lot of land sold to him

Mr

Mr Pinault for Pltff, land sold was not declared subject to a certain Cens & cas which has been established upon it — That it was only in 1831 the P.V. was put in force, of which Pltff had no knowledge — moves that Experts be named to ascertain his damages —

Mr Rodier for Defendt — has not filed a plea — but objects to the right of action — This charge on the land is a public charge — not imposed by Defdt — and Pltff would have been bound thereto as possessor of the land —

No. 1391.
Scott
vs
Falardeau
&
Lepage oppt

Opposition a fin d'annuller —
Cherrier for Oppt — contends that sale of the land, at least for one half should be set aside — Henrion-p. 46 — The oppt here was never put out-of possession — cite cas —

Mr Buchanan — cas cited does not apply — The oppt here cannot avail himself of his right after having himself become purchaser of the property — he is in contempt, after thus approving of the sale by becoming the purchaser — It is impossible to ascertain what part of the price can belong to the oppt — what he bound before the Court —

Friday 17th April – Good Friday

Saturday 18th April. –

In ré
Driscoll
vs
Devins –

On complaint of Mr Driscoll, one of the advocates of the Court against Peter Devins, the assistant Crier, for improper expressions used by him – reflecting on the Conduct of Mr Driscoll and on the – gentlemen of the Bar – The said Devins had been examined on Interrogatories, and denied the Contempt in consequence whereof the Complainant now moved that he might be admitted to examine witnesses to controvert the answers of the Respondent and to establish the charge made against him. –

Perkins.
vs
Johnson –

On motion of the plff that the Sheriff make his return to the writ of Ca: ad respondm sued out in this Cause and returnable into this Court in the Term of October last, which had been delivered to the said Sheriff to execute –

Mr Scott for the Sheriff filed reasons in answer to the said motion, which he considered to be sufficient to preclude necessity for making any return on the said writ. –

Ex parte
On Petition of Coullard
& al –

On Petition to obtain a writ of Certiorari to the Commissioners for building & repairing Churches Application rejected as not within the jurisdiction of the Court – See Prov: Ordce of & Indicat. Act –

Menard vs Raimond & Raimond opt — Opposition maintained and main levée granted.—

Leclerc vs Papineau et al — On Endorsed note — action dismissed as ag the Endorser, there being no proof of notice of protest ag the drawer having been given to the Endorser the certificate of the Notarys that they had put a copy of the protest into the post office addressed to the Endorser being held insufficient.—

Ex parte On Petition of Quesnel — and Olcott — opt — On Petition for Confirmation of Title — The oppos[n] claiming a right to the property of the premises in question was rejected by the Court, as by law they could not have determined upon the right of property —

Hettrick vs Tassé — Plea of Chose jugée maintained —

Moreau vs Mallet — Action on Doctor's bill & on note — Judgt for Plff note subscribed by mark of Defendt & proved by two witnesses, admitted as proved by Writ —

Skakel vs Somerville — Judgt for Plff

Bowen vs Ayer — Action dismissed —

Monday 20th April.—

Prest
all the Judges.—

Cartier.—
vs
Menard.—

Judgt on an action en decln d'hypotheque—
in which the Defndt improvements were allowed
to him—

Nevers & al'
vs
Rocan —

Judgt for Plff

Bond.—
&
McKenzie.—
&
Webster Cur'

Judgt for Plff

Begly & al
vs
McKillip
&
Andrews opt

Opposition maintained, & main levée granted

Rutherford
vs
Dilorme
&
E contra

Report of Arbitrators confirmed, Costs divided

Woodhouse
vs
Easton —

Motion to amend allowed—

Major
vs
Ermatinger

Defenses au fond en droit dismissed

Bank of Montreal
v.
Cartier, ux — Judgt for Plffs

Forsyth, Curr &
Levesque — Judgt for Plff except as to Lods & Ventes upon the deed of retrocession, which was refused —

Scott —
v.
Falardeau
v.
Lepage - oppt — Opposition dismissed w/ Costs —

Bellingham et al
v.
Dorion et al — Judgt. for Plff - on Count for money had & rect & on Un Count not being all agreed as to the right of recovery on the special counts of the declr —
☞ This Judgt was rendered on the 18th

No 95 & No 1104 —
Campbell
v.
Achim et al — Judgt for Plff on 2 Causes united —
Judgt rendered on the 18th

Hamelin
v.
Reine —
and
Econtra — Judgt. dismissing pr principal demand & Judgt for Deft on Incidental demand —
Judgt rendered on 18th

Clement
v.
Sauvé — The Court was divided in opinion on this case - and parties informed that no Judgt would be given — Judgt rendered on 18th

Murta
v.
Andres et al — Judgt for Plff — do —

Lebrun
v.
Desjardins — Action dismissed — do —

June Term. 1835.

Monday 1st June

Pres.
Mr. Justice Reid
Mr Justice Ryke
Mr Justice Rolland
Mr Justice Gale.

No Overton v Cuvillier	Over till to morrow
No 995. Reid v Burlingham	On Defendt mo. to grant process, as no true copy has been served on Deft
No 655. Redd et al v McConnell et Ashton - opp	Opposition dismissed.
Betts v Jones	Order for uniting this cause with No 681 Jones v Betts
No 1936 Fabrique De Lachine v Duchesne	Judgt for Plff
Lynch v Fitz Gibbon	Judgt for Plff in two causes

Tuesday 2d June. –

Pres.
all the Judges. –

No 672.
Maitland & Co
vs
Ward
&
Davis Exrs

on opposition of Mr Scott atty for his privilege on the Defendts property for his costs – viz preference to the claim of Mr Yule

Mr Bleakley for the Plff contends that Mr Scott has neither privilege nor mortgage for his costs –

No 518.
Dowson
vs
Civilian

on Defendts motion for a new trial

Mr Driscoll for Defendt – Two grounds for application – 1st Verdict contrary to evidence 2. Damages excessive – ——

Plff leased a house to Defdt – rent due – house burnt – Plff recd cont. of insurance – Defts debt not paid – objected to the assessment – and also to repairs – altho' bound – reports afloat that Plff had burned his house – Bailiff sent to Defdt – Trunk singularly secured sent to Larkin by Plff to be delivered to one Russel – but then by one Gilbert – who perished in the fire – Plff sent a letter to Thanks the Taxmaster at Larkins, to get the trunk – saying Russel

was

1. Refusal to pay the rent - on wrong pretences -
2. Receipt of the Insurance money -
3. Refusal of Pltff - Trunk to Lachine - Return of Wife to Hallway House -

was gone to a distance - This thanks refused - Pltff then proposed to Arrock to go to Lachine & personate the absd Russel & obtain the trunk - This was refused - The trunk was opened, and was found to contain articles belonging to Pltff only -

There was other information given to the Defendt - in regard of the wife of the pltff having gone to half-way house with the trunk cont. plate & jewellery, some two or 3 days before the fire - Defendt application to Rigby in regard of this fact - who had the report from one Grafton -

The damages are twofold, vindictive, and real, - here excessive - here no malice shown by Defendt he wanted the convenience of Pltff till he had received his money from the Insurance Office - called on Pltff five times on the very day of the arrest - who refused to satisfy Defendt demd -

On the arrest the Pltff deposited money w. Sheriff in lieu of bail, & was not committed to Gaol -

Mr Hart for Pltff - It is not on proof that Defendt had the information he has stated before the arrest - Defendt was consulted merely as a Magistrate - Scilly the only person with whom the whole report originated and who spread it abroad -

Mr Day for Pltff - The communications given to Defendt were not in positive language as a proof of Pltff's being about to leave the province, but merely submitted to the consideration of Defendt - to act as he should see fit Courts consider Verdicts of Juries in a favorable point of view - How it was consistent w. the Charge of the Judge

and consequently both in law and in fact is right
The Jury more competent to judge than the Court —
The inconvenience of a second trial. —
1 Bell's Com. Thetford v Burton — The Jury alone competent to assess damages.
395. Tidd's New Practice — & cases there cited —
Mr Driscoll in reply —

Wednesday 3d June. —

Pres.
The Ch. Justice & other Justices

No 293. & 400
Green & al
vs
McLeod
&
Jackson —

} On oppos. mo. to rep. Pltff on fait & dt —

No 348.
Menard
vs
Geoffrion

} On Defendt mo. to set aside the entry on the Enquête book & Defendt admitted to ~~admit~~ adduce further evidence —

Mr Cherrier for Pltff, objects, as ~~the entry on the book is regular~~ — the rule taken out before the present advocate was substituted in the room of the former advocate — It would be irregular to admit this motion on its merits — after having been in default —

Mr Bleury for Defendt — action en Dépt de Corps & de biens — the facts ought to be fully examined — The Defendt was without the assistance of his advocate

No 1017
Hamel
vs
DeRouville

} Pltff's mo. to forclose the rule of reference —

№ 1292 –
Stuart, Curat
v
Christieval

On Defendr — mo. for delay to plead —
Mr Buchanan for Pltff — action here is of a simple nature, and delay unnecessary —

№ 94
Jamieson
v
Carpenter

On merits — action for prix de vente —
Bleakley for Pltff — Defendr have failed to make out their defence —

№ 1011 –
Ollive
v
Nyman –

action for rooms pd advanced by Pltff for Defendt —
Mr C. Bruneau for Defendr the Pltff ought to have Judt only for about £15 — deducting Credits made

№ 1246.
Leslie dal
v
Lemoine de Martigny

On report of Survey for establishing boundaries between the respective Estates of the parties. —
Mr. Bleakley for Pltff — The only question here is in regard of Costs, as both parties consent to the report of the Survey — The Defendr has been put in desence by the pltffs —

Thursday 4th June

Pres.

Ch. Justice & Puisne Judges —

No. 1649.
Hubbard
vs.
McDougall
McIsaac. J.S.

On Defendts mo. to open the Enquete — under circumstances set out in the affidavits filed

No 183
Valiquet
vs.
Donezani
& contra

action for house rent —

Pennault for Plff — To this action plea of compensation has been set up — which has been made by another account of Plff — That there being no proof of the agreement to accept the goods furnished by Defendt in deduction of the rent — the compensation ought not to be allowed — That articles from 4 March 1833 to 28 July — no proof — from 8 July to 14 July 1834 — no proof —

The greater part of the Plffs account is admitted —

Mr Chs Mondelet for Defdt — The proof of Defendts account although not altogether entire is yet sufficiently strong to admit the Defendt to his oath —

No 630
Preston
vs.
Gilmour

action for £51 — on deed

Griffin for Defendt — Plff never delivered the Coop & Cattle to the Defendt — & no proof made —

Barlow for Plff — The onus of proof was on the Defdt

№1047

Donegani
v
Aaron—

action on note—

Hart for Pltff— Pltff cannot recover— the Def. states that note was indorsed over to Denis Murray— who is thus become the proprietor of the note— The Pltff cannot even recover on the Common Counts, as the note is the property of another—

Perrault for Pltff— cites Starkie p 123 — to shew a note may be admitted as proof of monies had & rec^d—

123

№1368

Moreau
Mallette
&
Mallette op^t

Hearing on law— on Requête Civile—

Mr Cas: Bruneau for Defend^s— on Requête Civile

The Defend^s— alledges that a sufficient plea was not made to the action

Friday 5th June.—

Pres.t

The Ch. J. and puisne Justices.—

No. 61.
Proud dab
Clarken —

action on an act of Cautionnement —
Scott for Pltff. Caution on a lease of 2 quarters rent due — It is now contended that Lessee died & never entered into possession — & this plea Pltff. demurred but Court ordered proof. — It appears that the Lessee died before the first May, but the premises were possessed by the widow — This is sufficient — Poth. ob. No 125. 6 — & No 264. in fine. & No 637 — Poth. Louage 317 — death of one of the parties does not alter the Contract — It is however alledged that by a subsequent agreement the lease was set aside — but this agreement does not in any manner affect the lease —
Pillsbury for Defdt. The lease never having been executed, has become null — & therefore the authorities cited do not apply to the lease never executed —
The possn taken by the widow must be presumed to be under a new Contract, as the rent is demanded only subsequent to her death — The subsequent agreement between the parties on the same day of the lease, would show that the lease had been set aside & the deceased Hayden was to be the bar keeper of the proprietor —

№ 197
McVey — vs — Dillon

action for prix de vente —

Mr Scott — plea, payt — the debt however set up as due to the Surgnor appears to be discharged — & there will still be a balance due to Pltff of £8. 7. —

C. Brennan for Defdt — the balce due is only £6. 5. — 4 for which the action cannot be maintained in this Court —

№ 569
Lafaille — vs — Mercier

action on oblign

Lafontaine for Defdt — has fd £4. 15. on acct. which reduces the Pltff's demand below the jurisdiction of this Court — The Pltff has set up a Dupt of the Commissioner's Court of the receipt produced by Defdt but this will not apply — the Dupt produced is not authentic —

Blumfield for Pltff. the receipt produced by Defdt was already produced on an action brot by pltff ag Defdt in the Comrs Court, & was admitted & action dismissed — the receipt not proved —

№ 695
White — vs — Hondlow — sol —

action on note —

Stanley for Defdt — No partnership has been proved — Moves to reject the evidence to prove the partnership

Griffin Exp. Ev. p. 87 — the evidence is here sufficient — 583. Starkie on Ev — Id. p. 585. —

№858

Robb
vs
Desautels & Lapointe —

Action of Damages for a personal injury done to Pltff by running ag[t] Pltff by his carriage and dislocating his arm —

Boston for Pltff — considers that his action has been fully maintained —

Mr Bleury for Defend[ts] — There is no proof whatever ag[t] the Defend[ts] —

№1300

White
vs
English

Action for goods sold —
Griffin for Pltff. says — £12.15.7 — bal[e] due
Stanley for Defd[ts] has made a tender of what he owes —

The Alliance Assur[ce] Co —
vs
Owston —

On motion of Mr Griffin of counsel for the pltff. that the Defend[ts] be held to change the conclusions in their plea to the Country and to conclude to the Court inasmuchas the trial of this cause cannot legally be had by a Jury —

Trial by Jury can be had only on contracts & agreements between merchants & Traders so reputed and understood according to the Ord[ce] of 1785, and the case here is not of that description, being for a fraud committed by the Defend[ts] in obtaining money from the Pltff[s] under false representations — The Provl. Ord[ce] of 9 Geo. 4. ch. — extends this trial to certain acts of Damage done to moveable property, but is nowise applicable here. —

Mr

Mr Hart for Defendt— The debt here demanded is — founded on a policy of Insurance entered into by the plffs,— which is a trade and Commerce, and by it the goods & effects of the Defendt— and his Stock in trade, were insured— The Defendt carrying on trade as a Tavernkeeper is considered as a dealer and trader, and the object in contest arising out of mercantile Contract in regard of that trade, can be tried and determined by a Jury according to the Provl Ordce—

Mr. Chas Mondelet for Defts— The act of Insurance is of— itself a Commercial act, and the plffs here who appear to be associated together for the purpose of carrying on a trade & business as Insurers, must be considered as Merchants and Traders - N. Denizt Vo Assurance §. 5.— & it appears that in France certain privileges were granted to acts of Insurance— as Commercial — Nay Minors could enter into such Contracts for the business they were carrying on - Poth. Assurce— No 37. and No 91. 2. 3. 4 — Repse Vo Police d' assurance — Boucher, Droit Maritme p. 143.— Emerigon. p. 94. No 295.— Repse de Merlin. Vo Marchandises 3 Boulay Paty. p. 350—

All speculations in the way of business are Commercial— Pardessus No 592. A Tavernkeeper is a trader — Boucher. Instit. Comls §. 74. §. 92. 93— Rogue. Juris: Cons: p. 21— Merlin. Question de Droit. Vo Marchand — Repse Vo Tribunal de Commerce — as to what is considered to be Commercial Vincent. p. — Pyke's Rep.. p. 16.—

Driscoll for Plffs in reply — Trial by Jury is an exception to the general law, and must be confined within its limits — and according to the Ordce of 1785 - a Sale of goods by a merchant to a man who is not a Merchl— is not a case to be tried by a Jury — Every Insurance is not a mercantile one — a Farmer ensures his barns & his Crop — a priest his books and library — this is not mercantile — The authorities cited are from writers on the New Code of France, which to obviate all former difficulties and doubts has declared all acts of Insurance subject to the Consular Jurisdiction.— A Tavernkeeper is not a Merchl & Trader so reputed & understood under the Ordce of 1785 — But this action is for the rescision of a Contract which could be had in England only in the Court of Chancery.—

Saturday 6th June.

Prest.
All the Judges

No. 19.
Bradbury
& Hoyle } on Defendt mo. that Inscription be discharged and the Pltff. held to file a bill of particulars –

Mr Grant for Pltff. had Defendt moved for delay to plead, it might have been allowed, but on the strict rule the application cannot be granted – this not an action of general assumpsit, but on promissory note – hence Defts is too late after time for pleading had elapsed –

No. 322
Benoit
Morin
& Bonthillier, Esqr
mis en Cause } on rule –

No. 539
Menard
Choquet } action for arrears of rents & pension Viagere – Ex parte.

No. 1007.
Reid & ux
Molson Jr } action of trespass –
Mr Buchanan for Defendt – Submits circumstances of mitigation –

No. 1123
Rhodes
vs
Bradbury & al }

No. 746
Fringland
vs
Watts
& Contra

On Pltff's mo. to have enquete declared closed
Mr. M'Gillivray for Defendt states that there are several witnesses now absent, who are material for his Cause

Owston
vs
Cuvillier

Rule for a new trial, absolute on payt of Costs

Monday 8th June
Tuesday 9th " } Enquete days

Wednesday 10th June.—

Prest
All the Judges.—

No 703.
Debusat
vs
Lorian

on Defendt's mo. to discharge rule for hearing to day
Mr Rodier for Pltff — action on deed of Sale — The question turns on Law — & no Enquete necessary —

No 1640
Dorwin
vs
Colburn et al

On motion of E. E. Colburn to quash process as regard of him, as service & process is irregular.—
Mr Nye for Pltff. The service of process at domicile of Deft who live in the same house —

№1440.
Blondeau
v
Bidard

on mo. to ex. Pltff on faits & articles. —
~~Blondeau for Pltff~~ — Pltff has already been ex on faits & articles, & ought not to be called upa second time —
Pellew for Defts. The ex. of Pltff already had was merely to prove the interruption of prescription —

№378.
Jac: Roi
Antè Dame

on Defendts mo. to continue the enquete —
Mr Bleny for Pltff. The enquete has been declared closed last vacation — a day was given only to controvert some testimony given by some of the Pltffs. witnesses. — This has been done —

№763
Debusat
v
Lorian —

action for a term of payt —
Mr Rodier for Pltff, the Defendt has pleaded exceptions which cannot be permitted, as the compensation cannot be pleaded — nor the allegation as to mortgages on the property —
Mr Bleny has alledged facts sufficient to shew he is entitled to a further security from Pltff

№1062
Seguin
v
Ranson —

action on deed of lease — on leave
Bleny for Defendt. declaration is too vague — he says that £16 — is due on 3 last payts. without specifying on which term the balance is due —

№ 1173.
Seguin
vs
Dudos & ux

On Law —
Mr Rollin for Defendt — the obligation set out is imperfectly stated —

№ 1216.
Mercier
vs
Martin
&
Econtra

On report of arbitrators —
Mr Charles for Pltff prays for hom. of the report
Mr Roder for Defendt — the pltffs demand has been reduced one 4th

Guerante
vs
Quintin &
Dubois
&
H. Quintin &c.

Mr Bleury for Pltff. demands that the opposition be dismissed, as being unfounded —

№ 1316
Major
vs
Ermatinger

On the merits —
Action of damages for disturbing her in the enjoyment of a house leased to her —
Mr Boston for the Pltff —
Mr Scott for Defendt — that Pltff had no right of possession in the premises, that Defendt had leased the premises to a Mr Mead from whom he had obtained a consent to make the repairs in question — & as she was a tenant without his consent — the only action Pltff could have would be at her immediate lessor — There is no proof of any damage — The repairs were necessary — done with care, & without any delay — № 77. Cod. Louage — & Id. № 106 — 59. 60 245 Dempt. Pr Bail —
Boston for Pltff. Pltff had no right of action at Mead, but at

him

him who did an injury & not of Mead, who did him no injury — That the consent of Mr Mead could not authorize Defendt to commit this injury

No 1627
Ermatinger
v
Gorrie —

action for value of wheat sold
Scott for Plff. There is a direct contradiction in the evidence adduced as to the quantity of wheat delivered and in consequence the Sermt sumptuous of the Plff ought to be recd —

Mr Grant for Defendt — The evidence adduced is in favour of the Defendt — 120 bushels were delivered the first day — but when weighed a great part of it was found of an inferior quality — & the remaining part of it was sent back to Plff who recd it —

Moves to reject the testimony of the two witnesses of the Plff, as being interested —

Millilberger
v
The City Bank

action for money had & recd —
Mr Foster for Plff. The Plffs had an act. w.t the Bank in Oct 1834, & on demand of the money which ought then to be to the credit of Plffs the Deft pretended that in consequence of a certain bill of Exch q.t had been drawn by Plffs on Millard & Co in N.C. q.t had been discounted by Deft q.t bill had been dishonored & returned under protest to Montreal — the monies of Plffs had been applied to discharge that bill, & for this alpha of Compensation was sought To this replied that 2 days after protest, & before the bill had been returned to Montreal the Drawers had pd the bill —

To

this there is a general replication —

That a distinction is attempted to be set up as to F. A. Harper at Brockville, as being the agent of the City Bank there — & that his sub-agents, Morris & Co also were well known — refers to a letter written by F. A. Harper addressed to Mr Castle, the cashier of the City Bank, dated 4 Oct. 1833 — & to shew that the act of Morris & Co would be binding on the City Bank, Mr Holmes Cashier is sp. to shew that Morris & Co under such circumstances would be considered as a good agent for Montreal Bank. for whom Harper was an agent — refers also to an extract of a letter from Mr Castle — as to the authority given & acceptance of Harpers propositions, marked E. C. & B D — Various documents produced to shew the Defendts acted under this authority altho' the bill was not in the hands of Morris & Co at the time when he rd the money, but was on the way to Montreal — yet the act of a general agent is sufficient in such a case and is to be distinguished from a particular agent —

Paley 139 — a general authority presumed — 2. Pardessus. No 558 — circumstances of the case may require the substitution of an under agent — this perhaps goes further than the English Law —

Paley 238 — the authority may be presumed —

Id. pp. 31 — also p. 145 — adoption of agency in one part of facts, must be extended to the whole —

Chitty on bills. p. 23 — the agents here cannot be considered as special, but as general agents of the City Bank — Harper & Co were to do all the business of the City Bank in U. C. Paley. 162 — opinions of Mercantile men & the usage in Mercantile transactions may have had reference to — as stated in evidence of Holmes — Poth. Mandat. No 46. 47 — where benefit may arise to the principal an authority presumed — Poth. No 90 —

Mr Buchanan for Defendts — There is no proof of any such agency as that alledged — nor authority, or privity of contract between Defts. & Morris & Co — The bill was sent back

to

to Kingston on being protested — and immediately on that protest being made damages &c & P & C immediately became due — the payt to the agent, even if such, of a part of the money, was not sufft. as such agent had no power to compromise the debt — according to our System, a man employed to do certain acts cannot be considered as general Agents — Paley 164 — The authority here given to Morris & Co was for the collection of monies only — 2 Kents Comt. 484 —

Paley 164

Drawer of a bill must pay to the holder of note Pott. Charge No 164 — Roscoe. p. 239 — When the agency ceased, by the transmission of the bill under protest — Pardessus, Change No 224. 230. 286. 293 Paley. No. 209. 210. 211 — payt. to & receipts by agents — made to a person in poss[n] of the Security —

Had Morris & Co kept the note they could not give up the damages — Paley. 221 — no power to release or compound the debt — Poth. Mandat. No 114. 118. & 121 — The returning books & papers is a delivery up of the authority of agent — The entry in the City Bank's books was made before Mr Carter rec[d]. the letter from Morris & Co. of their having rec[d] the money — The Plffs cannot consider the money p[d]. as a deposit in the hands of Morris & Co for the benefit of Plffs with C. Bank nothing has to shew the payt. meant as a deposit — Nor is there any proof such a deposit — Accounts made out by Plffs. Numbers but no proof — a plea of debt off is no admission of a debt — Stark. 131 — & case Marwood. v. Jones —

No 131 —

Mr Fisher in reply — refers to depn of Mr. Carter to shew that there was money in hands of Bank due to Plffs — The debt set up by Bank was paid before they had a right to claim any compensation — The bill was not sent back to Montreal before 29 Sept. — & compensation by Bank before then could not be set up — on denunciation made to Plffs Pott. Charge No 188. — no notice here that bill had been dishonoured

Charge 188.

The drawer of the bill could not be liable till a protest made & notified – the acceptor is the person first & ultimately bound – Chitty, bills 349 –

J. R. 189 –

Paley. 44.5 2d Edit –

Morris & Co were to be considered as the general agents of Dept
Paley. p. 2 – mere employt. will constitute agency –
Defendts. cannot put money in such a state as they can reject or accept as they may see fit –

Warwick
Warwick &
Fortune opp.

On claim of oppost. for a Customary dower – as widow of the late Guy Warwick
Stanley for oppt claims the value of her dower on the monies levied – It is set up that this property was partnership property & on. of the oppt would have no dower – but the original concession was to Guy Warwick alone – & any evidence adduced to shew it was partnership property is insuffe – & he has moved to reject it It is also alledged that the opposte has interfered with the property of the succession of her husband by disposing of some parts of it –

Mr Boston for Plff – In 1817 a copartnership was formed between Guy & Jos. Warwick – for this purpose a lot of land was purchased in the name of Guy Warwick to carry on the manufactory – all the improvements were made by the Copartnership – The claim of oppt is resisted by her having intefered with the Estate of her husband – cites arts Cout. 217 The widow made no Inventory – but employed a person to sell all the property – art. 1. sect. 7 ordce 1667 –
When a partner makes a purchase it is presumed to be for the benefit of the partnership – 1 Desp. 143.

Thursday 11th June

Prest

Ch. Justice & other Judges.—

No. 951
Ruttwell
v
Kurczyn—

action for value of use of furniture & for wages—

Day for Defendt This charge does not regard the partnership — the Plff was the mother of the late Chamberlin — & undertook the management of his family concerns — There is no proof that Plff was ever employed by the partnership — no proof of services — no proof of value or use of the furniture —

Mr E. Day for Plff — The Shop of Partnership was in the same house in wh Chamberlin lived — Defendt directed the expenditure of the establishmt — The Plff continued in the service of Defendt from Augt 1832 when Chamberlin died until January 1833 —

—

No. 977
Rodier
v
Lusignan

action vs Defendt for 26 days occupation of a house for holding the poll at last Election which Defendt occupied as returning Officer —

Mr Rodier for Plff — The value of the occupation & of the other articles furnished, has been proved — The clerk, Lovinier — but judge of damages — & Deft pr — proves damages — There was no previous contract, but the quantum of demand can be ascertained by Pr —

Mr Peltier for Defendt — has made a tender which he considers sufficient, viz £11. — The house not furnished & would have req. 6 weeks to finish it — The election commenced on 28 Oct, a season when houses are not

generally

generally heard — There was no danger for the house, as no person lived in it — Delorme says he wd have rented the house for 5 ℔ p day —

Mr Rodier in reply — the danger was evident — & the injury certain —

№ 1041.
Peddie
Clarkson } cause submitted, for jours sold —

№ 1247.
Langan
Johnson } Action en sepn de corps & de biens — Ex parte —
Mr Buchanan for Pltff — although adultery is sd not to be a cause for a wife to demand this sepn — yet when the husband abandons the domicile of his wife and lives in a continued state of adultery at another domicile, the action lies —
2 Pigeau. 201 — 204 — 209 —
2 Duranton. p. 488 · 504 · 510 —

№ 1448
Stubenger
De Boucherville } action for assault & battery — on law
Mr Lafontaine for Pltff — The exception here pleaded cannot be maintained — it is no justification
Mr Cherrier for Deft — has pleaded, a provocation red from the conduct of the Pltff — which although not a justification, is yet proper to bring under the notice of the Court a Jury in the question of damages —
Mr Lafontaine in reply — The matter pleaded is no exception to the action —

№ 1571.

Contant & Tiffant —

On report of arbits

Mr Roder for Plff asks for the hom^r of the report

Mr Rollin for Defend^r contends that the costs ought to be divided, at least of the arbitration. —

№ 2356.

Jones & Hobart —

Action for 2 Instalments on Sale — merits —

Mr Day for Defend^r There has been no suffo lette given to Defend^r of the lot of land in question — It is an act sous seing privé, without seal — It is not done in duplicate —

O. Dewf. v^o. Double Ecrit —

Instructions on le Cour. p. 127. —

I. Day for Plff — not bound to give any title till the money has been paid — & so this the Defend^r is bound by his Contract — It is not a condition precedent that there sh^d be a lette given —

Smith. — & Field & al & Mills — opp^s

On merits of the opposition —

Mr I. Day for Opp^s claims the leather seized as his property — it was seized in a Store on the premises rented to the Defend^r — the key of which was delivered to the Opp^s

Mr Boston for Plff — The opp^s was appointed guardian to the property seized & ought to have made his oppos^n before the property seized was held to be liable to the rent, as being the property of the Defend^r — after this the present opposition is made, the Defend^r having absconded — The leather in question appears to have been the

manufacture

manufacture of the Depndts and their property—
637 The privilege of the proprietor is certain—1 Peyan 637.
Id. 634.—619— Rep.ts v.s Bail—21.—22.—extends to goods
Merlin. Dic. v.s Bail—

Mr Day in reply p 1042 No 1. Fr. Gr. Com.s The privilege does not affect the Property of third persons found on the house No 15. It & p 1048. No 21.—

Here the officers being Com.s Merch.s & the goods—
deposited with them for sale, the goods are not intended to
occupy the Stores, but may be removed from one day to
another— The officers were such
art. 1. Sec. No 236. 241. 245. 6— Poth. Louage—
18. Troplong. p. 199. 210— 211.—12.13— & p. 252. where goods are put
in a Store for a momentary purpose—

Russel dab
Ekenbergs
vs &c—

Judge for Defts—

Friday 12th June. —

Pres:
The Ch. Justice & other Judges —

No. ~~616.~~ 481

~~No~~

No. 736.
Porteous
Exr &c Deschamps } On the Report of Experts —

Mr Griffin for Plff. moves for hom. of report and also that the Court grant exemplary damages over & above the sum of £10 allowed by the Experts —

Mr Cherrier for Defdt contends that no more damages can be granted than that allowed by the Experts — That in consideration of the small sum allowed in damages, the costs ought to be divided or at most adjudged as Defdt. as in the Inferior Court. —

No 966
Stewart
Josh. vs Bell } action to compell Defdt to execute a deed & pay damages —

McLord for Plff — moves for Judt

Mr Driscoll for Defdt — The property in question was found to be mortgaged beyond its value — this is admitted — & therefore Defdt not safe in paying the money to the Plff. — Defdt have consigned the money and offer to execute a title on getting security. —

№ 2273.

Fleming
&
Ellice —

Action for work & labor

Mr Buchanan for Defdt — The work not worth more than £40 — the Pltff has brot up his own workmen to prove the work — whereas other disinterested witnesses shew the work was insufficient — There is a tender of £15 — 9/ — is more than the balce due to the Pltff —

—

Saturday 13th June

Pres.
All the Judges.—

No 507.
Feligh
v
Jones —

On rule on Jacob Glen, Snr. & Jacob Glen Jr

Mr Sexton for T. Saisis, contends the declaration is sufficient - moves that the rule obtd. against them be rescinded.—

Mr John Day - the declaration of T. Saisis is not sufficient.—

No 2747.
Mattlebuger.
vs
Porteous.—

On mo. for contraints agt Defendr—
ou to 15th—

No 302
Clarke dal
v
Talon —

action on act

Mr Peltier for Defendr— The act rendered having been accepted by the wife alone, is not binding on the parties — The Plff being a minor ought to have been assisted by a Special Curator as well as by her husband — v. Comte. N. Dmzt Tullier — The account ought to be accompanied by all the necessary documents & pieces justificatives —

Mr Mondelet for Plff — The Defendr has become bound to pay according to the act rendered — This is a moveable & accession —

№ 583.
Mc donald
vs
Walsondal

action for wages. —

Driscoll for Pltff contends that acts ~~have been~~ done by Pltff. son in one or 2 instances, cannot be set up as the general good conduct of the Pltff. son —

№ 654.
Snowdon
vs
Jouvette

action for wheat sold

Mr Lafontaine for Defendt — The Pltff advanced 1500th. to Defendt — in consideration of 300 bushels wheat to be furnished, or to pay the highest price of the wheat from July to June 1834 — The same day the Pltff agrees not to exact more than 5/ bushel, altho' the value proved is no more than 5/ — The Defendt before the action brought Defendt. tendered £27. 10 — Pltff refused, contending that Defendt owed £45. — The tender was sufficiently made — The Pltff agrees to accept the £27. 10 — but contends that Defendt ought to pay the Costs —

Mr Green for Pltff — The tender was never made as stated — The offres reelles cannot be proved by Witnesses — Repre p. 368. Vo Offres — Poth. Obl. № 578 — Dic. Fer. Offres reelles — 432. 1 Pigeau —

№ 743.
Sirard
vs
Toupin

action for price of land sold

Mr. Stanley — proof imperfect — papers put into the record, but not filed. —

№ 1209
Ste Marie
v
Roi —

action on obligation — for value in a horse —
Mr Bleury for Defendr — oblgn for horse, which was warranted by Pluff to be sound & fit for work — Pluff exand on facts & art. from gts a com. de preuve was made by other witnesses it is shewn that the horse was not such as warranted — The Pluff took back the mare she being unfit for Service —

№ 2534.
Mcdonald
v
Wm Scott

action for house rent
Grant for Pluff — house in Ste Eustache — occupied by Defendr for 5 years — Plea — house not tenantable —
Mr Scott for Defendr — The house was not in a tenantable state & worth no rent whatever — That had the house been tenantable — the full rent has been paid, as appears by the evidence adduced. — That £12. was a suffr rent for the house, even in a poor state —
Hart for Defendr — actor as Wm Scott — The document of lease is signed by Wm Scott. Jr — The Defendr denies he ever rented the house —

№ 2591
Glisses
v
Douglass
&
E contra

action for sundry lots of boards lodging
plea for Defendr —
Mr Driscoll for Pluff — Defendr has certainly proved a certain compensation, yt must be allowed — claims a balce of £16.0.2½ as by statement —
Mr Nye for Defendr — The action must be dismissed — no proof of the demand —

№ 2747.

Muttaburgh
vs
Porteous
&
Porteous &c vs

On oppos. of Defts
Mr Sweeny for Oppt — certain notes have been delivered to Pltff to recover the amount, & for which Pltff must account —

Mr Fisher for Pltff — The notes were placed in the hands of Pltff in Oct 1832, whereas Defts was in Feb 1834 —

Thompson
vs
Munn —

On plea of Misnomer —

Monday 15. June
Prest
All the Judges

№ 794
Cutler
vs
Bentley

On rule on Chas. Benedict, Commissr

Mr Grant for Commr says, that the papers have been transmitted —

№ 2044.
Guichard
vs
Baker

On objection raised to the testimony of Mr McCrae —

Mr Buchanan for Plff. moves to reject this objection a receipt given by Mr. McCrae by mistake, from entries in the books of Mr Reuter — this has been released —

Mr Boston for Defendt — The witness cannot be admitted to explain & undo his own act — The Wr has given a discharge before a Notary & cannot by his evidence set aside that act —

№ 134
Glasford
vs
Bertrand

On rule for Ca. sa. Bailf. —

Mr Brunau for Defendt — The rule is imperfect — no sum, no date of Judt — no amount of the moveables sold —

Rule discharged

№ 2747
Mittelberger
vs
Porteous

On rule for contempt

Mr Sweeny for Defr — the rule has obtained is

is too vague & indefinite — the portion of effects disposed of is not set out — nor can the affidavits more positive — The ordre of 1785 does not fix the length of this rule —

No 2494
Brunet
Dubé
& Dovers oppts

Ore Dupl. of distribution —
Mr Cherrier for the person last collocated contends — 1st as to what is called "frais necessaires" examen de 4 oppositions — nothing in the tarif ~~2e Exam de bons 15f — nothing was heard~~ frais taxés sur 2 oppositions admises — £6.7.6 — 3 frais taxés sur folle enchere & pour parvenir à une vendition opposas — frais d'oppos. afin de distraire — the rights of last collocated are before this in point of hypothegue

Mr Lafontaine for Plff — frais necessaires - are for examg the oppositions — Poth. Proc. Civ. p.260 all necessary costs to effect the sale are privileged — 1 Pigeau 810 — 678 Rep. Jour 13 —

No 138
Hart
Squares

action for fees of the attorney —
Mr Bleury for Defdt no proof of the demand —
Mr Lowery — the only object was to have the bills re-taxed which has been done

No 296
Scott dal
Pilcop
dal —

on Report of Experts —
The only question as to division of the Costs —

№ 317
Shedden
vs
M^cPherson dal

action for damages by Defend^t not having
forwarded 2 boxes of goods to Kingston belonging
to Plff in 1833.—

Taylor for Defend^t— The boxes were by mistake sent
to M^c Donell at Toronto, instead of sending them to
Kingston— M^c Donell rec^d the goods, and began to sell them
Plff on this acquainted M^c Donell to look to Defend^t for
instructions, as he Plff held Defend^t responsible — That
Defend^t was willing to accommodate the matter, & to
pay any loss that might accrue by the mistake, &
allowing goods to be sent to Kingston & sold there +
that Plff objected to this & pursues Defend^t for full value
of the Invoice — but these goods were partly damaged —
and there is no proof of their value —

M^r Moreau for Plff— The Defend^t have denied all
the facts charged, and have put the Plff to much
unnecessary expence — He has proved the value of the
goods as stated in the Invoice by 2 Witnesses,

№ 528.—
Greene dep^t
vs
Lesperance—

Quest. as to Costs—

M^r I. Day for Plff— Defend^t states that before
the process served he sp^d this amt of demand. viz^t on 29
Jan^y. on 1^st day it was served—

M^r Perrault for Defend^t. The Defend^t had no
knowledge of the suit, when he sp^d the debt—

No. 781.

Hobart
vs
Phœnix assurance Co

action on Policy of assurance Co for loss by fire —

Mr. I. Day for Pltff — Case has been made out as to the assurance on the Tannery as to £1000 — There is some contest as to the construction of the words of the assurance

Taylor for Defendt — The plea here, is that the property of the Tannery was not properly described — 2d That the fire was occasioned by fraud or negligence — 3d. No notice given in time to Defendts &c

The evidence adduced consists mostly of the testimony of the pltffs servants — This is suspicious. — The machinery in the tannery is not included in the policy. — as the Policy goes only to the building of a Tannery —

The two sheds were not included in the description which is a misrepresentation of the state of the premises — had these sheds been included in the Policy, the premiums would have been higher — this is proved —

1 Marsh. 265.
1 Emerigon. 15. 20. 59.
Reports re Assurce
p. 6857
2 Pandects. p 374.5

There must be an adjustment of the loss, as the Pltff was insured at another office —

Has made a tender of more than proved, but as there has been no adjustment established, it ought not to be binding on Defendt —

Park - p. 196
1 Camp. Rep. p. 274

Mr. Day in answer — There are 10 diff. pleas made to this action all of which have failed — The 2 sheds were erected to protect the bark, & did not increase the risk, but on the contrary. There is no proof of fraud. — Policy to be ~~construed~~ construed largely for the benefit of the insured. Park. 40 —

№ 928
Dorge
v
Minie. — action for house rent — Defdt did not appear

№ 946
Dimes. Tate
v
Robertsons — Action on acct rendered —
Brunean for Pltff — agrees that the sum of money which Defdt were to detain in their hands on giving securities — may have the alternative allowed them by the Insts by paying the money or giving the security — The other question as to costs of Arbitration of Defdt ought to pay —

№ 1164
Tubby
v
Mettenberger — On Law — action for Slander —
Plea compensation of Slander
Griffon for Pltff — The words set out in compensation are not sufficiently set out to warrant compensation

№ 1555.
Russel & al
v
Curot — on writ sued out of Defdt to take up the instance — on law

Trahan for Pltff. The Defdt denies the facts generally but says nothing as to the qualité in which she is sued — which must be taken up her as admitted — where the plea goes to the merits —

1 Pigeau 165

Ch. Mondelet for Defdt. The principal part has alleged that the Defdt is Executrix, & this fact is denied — the proof must be made —

Yule
v.
Wilson
&
Chapman
opp.

On merits of Appeal on — ex parte —

M.Cord for Appos.— property sold on pt. on pt. belonged to oppt. but claims the whole on half as his property — & the other half for the monies he pd. for Wilson for the other half — Chapman appears to have pd. the other half by payments made on act. of Wilson to one Cardinal to whom Moses the Vendor to Wilson & Chapman had transferred the pays due to him by them Renvoi see 64.66. ch.7 — ch.9. p. ~~249~~ 241 — No 3. & 4 —

Taylor for Plff — The pays were made by the parties from time to time, without ascertaining the pmts & there was no subrogation taken by oppt. without which there can be no privilege to the person paying — The acknowlds of Wilson can be of no avail after the Debt was paid — This is an act sous seing privé — and is not proved — The Wit. Fran. Chapman cannot be admitted — and only one witness adduced by oppt — which is insufficient — Poth. obl. No 280. Renvoi ch.2. p.24. No 23 — Id. ch.5. p.80. No 17. — ch.7. No 61. 2. 3. 4. — —

The Civil law lays it down that the Co-obligé who pays, is by law subrogated in the rights of the Vendor — This is stated by Dumoulin, but denied by Pothier, as not holding in the French. Jour. Aud.ce 26 Augt. 1706 — where subrogation was denied — Laroche. vo Subrogation — Denizt — co. vo — Cambolas has a similar decision — liv. 3. ch. 16.

Dig liv.27. tit.7. law 1. sec.13

Bourjon however is of a different opinion — but this seems to refer to a case of insolvency of one of the Co-obligés —

Mr McCord — asks rights by subrogation, but as a creditor of Wilson — can locate on subrogation Repse 464 2 col. The hypothèque arises from the receipts taken by authentic act from Cardinal

Poth. obl. No 264
2 Bourg. 113. no 6.
7 Tuller. No 147. —

See Repse vo Subrogation. pp. 443. 4 — §. 5. —

No.

Bourdeau
Ste. Marie

action for prop de Vente —

Mr Cherrier for Defendt. the cause ought to have been previously heard on law, before hearing on the merits. —

Mr Brunean for Pltff. There is no matter of law for a previous hearing —

Ex parte
Robert Hoyle

Motion by the Solr Genl on behalf of Robert Hoyle, Collector of the Customs at the port of Standstead in this District, for a writ of assistance under the British Stat. 3. & 4. Wm 4. ch. 59. sec. 61 "For regulating the trade of the British possessions abroad" &c —

Tuesday 16th June.—

Prest

All the Judges.—

No 168.

Reynolds & al
v
Lussier

action of revendication for timber & damages

Mr Day for Pltff. Pltff timber was found & detained by Deft at Varennes, & refusal to deliver it up.— The Defendt admits 11 stacks — the attachmt shews there were 16 in his possn— Their possn is proved by the Defendt having marked the timber— refers to the Stat. of Geo. 4. Ch. 11, sec 20. 21. now expired, to shew that conduct of Defendt is within it.

Mr Morgan for Defendt a demand for 24 pieces of timber — 11 found in possn of Deft— 5 more in the possn of other persons— No regular demand was ever made of this timber— but is ready to deliver up the timber to the propr on his paying the expences he has been put to in saving the timber.

Objects to the testimony of Mr Leod as an interested wit and as the person conducting the suit the ~~wood~~ timber was claimed by the agent of Martin Herrick & Chas Day, to whom the Defendt had given his receipt as having it in his possession— The Mr Mc Leod had no authority to shew from the pltff, nor would he give Defendt any acknowledge for the timber

Considers that pltff has not proved their property—

№ 610

Kaunts dal
vs
McKillop dal

On mo. for a Contraint agt Defendt for a contempt —

Mr Perrault for Pltff — Opposition made to the seizure & possn of the Steam boat — evidence of the facts are clearly ascertained —

Mr Boston of counsel for Pltff adopts to facts proved —

Mr Buchanan for Defendts — The Defendts are not guilty of any desire to resist the process of the Court — their conduct shews that they acted as having a certain right which they wished to preserve — The fact of muskets and stones being collected on board the boat to be used by the Defendts is contradicted by several Witnesses — no evidence that affects Hinton —

—

№ 557.

Laurier
vs
Roi dal

Action for wages —

Lafontaine for Pltff — The widow Ladieus is the only Defendt who has pleaded — The parties entered into a Contract as to the work to be done — it has now been completed — She contends she ought not to pay any thing for the minor, who is now of age —

Mr Cherrier for Defendt — She offers to pay the half of the expense in her own right, but cannot be bound as tutrix of her son now of age —

No. 605.
Kelly
vs
Cuvillier

On pris de Vente —
Mr Lafontaine for Defendt admits that only one of his exceptions has been proved — & that others must be dismissed —

No 611.
Hart
vs
Trudelle.

On Leave —
Mr David — Defendt has pleaded an exception that the Plff never accepted the Delegation stated in the deed —
Debate

No 888.
The Kings
vs
Carter & al
Curtis —

On Certiorari —
Mr Mcdonell for Prosn —
Mr Sol Genl — Question whether the Isle of St Ignace belongs to the parish of Sorel — and according to the ordre of 1723 the parish of Sorel comprehends that Island —
Mr Mcdonell for Prosn — in all Ecclesiastical purposes the Island St Ignace is in the parish of Isle du Pas — That

No 1298
Picotte
vs
Archambault
&
Corneiller Oppt

On opposition —
Lafontaine — one of oppos. proved — only one of oppos. is inscribed —

No 804

Hobart
v
Phoenix assur
Co —

action on Policy of assurance —
Day for Pltff action for £25. 4. 8 for
damages to a house & goods in it — Qtm
has been estimated by compleat witnesses —
Taylor for Defendt — This action should have
been joined in another action between the parties
The particular pleas are is, that a sufficient
description of the premises insured was not given
nor of the articles destroyed — There is no statement
whatever of the goods consumed — The original
statement given in to Defendts is produced, which
is variant from that produced by Pltff —
Damage on them £5 — not proved — & £5 — to save
them — The fence was not insured — & there can
be no compensation for it
Mr Day in reply — there is no essential
difference between the statement filed by Pltff
& that given in by Defendts

~~Stockdale~~
McCallum
v
Carpenter
&
Carpenter
opp —

On opposition of Defendt —
Day for Pltff — This was an action by Pltff vs
the Defendt. made a delaissement & now
after sale of the property claims the monies
arising therefrom, under a mortgage by Loy
in favor of the opposr — But when Defendt
purchased the property the order of Loy made
part

part of the purchase and Defendant separated from the Royal Family. The Defendant was afterwards sued by Loy for the other Note —

The Heirs Dunn obtained Judgt against Defendant for their debt, and pltf Defendant paid, obtained a transfer of their right in consequence — The Defendant made improvements on the land, while he possessed it.

From these circumstances the Defendant is entitled to a preferable claim on the monies arising from the sale of the land —

Mr Sol. Genl The mortgage by Loy to Carpenter cannot maintain its priviledge — The Defendt having purchased the land, a confusion took place in the person of Defdt as to this mortgage — Poth. on Confusion — Renusson Nr. 21. Ch. 5. similar case as present — But after the purchase the Defendant gave up all his rights & pretentions to this mortgage —

No mortgage accrued until Defendt paid the money for Loy Basnage - Ch. 13. — no money was paid due before the mortgage of Mr Cullum was granted —

17 Topsons - No. 7 474 —

The Judgt in favor of the heirs Dunn appears founded on an antecedent seizing privé — Defdt makes a delaissement, but the property was not sold, as Defendt paid the money - and took a receipt from the heirs Dunn for all their rights — The arrears on pltf Judgt was given appears to have been on lots No 5 & 6 - & not on the land in question — Rodgers pltf to 35. of this money to Defdt — as being for his share on the lot he had, yet Defdt claims the whole of this. —

As to the improvements made by Defdt — he is not entitled

to

any part of it — The lot was not of value, and was deserted by Defendr when he left the lot it was of no more when he left it than when he took possession of it —

Mr Day in reply — admitting the sum pd by Rodgers to appt. there would still be a large sum due to him on the Indt of Dun's heirs —

When the Indenture is vested, his prior mortgage comes into full force — Banagr. ch. 17. —

Ch. 7.

Repsn to Hyslop. p. 666. 2d col.

Hyslop. 4th Vol. to No. 847. to No 857 —

The improvements are proved by the Wss

No 746
Finglands
to
Watts
& contrea

Action for rent of wheat sold
Boston for Plff — demand made out — The Defendr has discontd his Indt demand, and thereby deprives him of the benefit of the credit he would be entitled to — but agrees to a deduction

No 627
Boileau
to
Doucet

Mr Chauveau for Plff —
Defendr did not appear

Wednesday 17th June.—

Pres.t
all the Judges.—

No 1017
Hamel
vs
DeRouville

On mo. to continue rule of defence to 1r Petitn.
M. Mondelet for Defendr objects to it.

No 2467
Sabourin
vs
Sipiol
&
Benoit Int.

The parties were heard on the Interventions.—
in 2 Causes.

No 322.
Benoit
vs
Morin
&
Bonthillier
mis en Cause

Action on 2 Notes—ex parte
Deft. how for 2 nots are proved—

No 368.
Grece
vs
Cameron
& al—

Merits ex parte —
Grece for Plff — refus to evidence — name of
Daniel v Donald, not material, as party has
not pleaded

No 371
Roi dit
vs
Dame

action for assault & battery —
Mr Bleury for Plff — refus to evidence —
Mr Laberge for Defendr — refus to evidence also, to shew that
circumstances do not entitle the party to any damages. —

No 378
Roi
vs
Dame —

action for defamation —
Mr Bleury for Plff refus to the evidence —

No 403
Farquhar
v
Begley & Co

not sent

} action for non-delivery of certain articles purchased by Pltff at Defendt Sale

Mr. M'Coard for Pltff - The Pltff have purchased a quantity of goods at Sale, Defendt refused to deliver them - The Pltff some time after offered a good endorsed Note for delivery of goods according to conditions of Sale of Defendt also refused - Pltff is now entitled to his damages - This according to the usage of trade was all that was requisite - & the Pltff being a man in good credit, & the Note offered being sufficient entitles Pltff to his damages -

Mr Rossiter for the Defendt - The pltff here has not complied with his part of the Contract cannot recover any damages - The conditions of Sale have not been complied - There was a lapse of time from 11th June to 1st July the Pltff never required any part of the goods - refused to give an endorsed Note or any Note at all, or such as was approved of by Defendt -

Grant for Pltff - The only question is whether the Pltff has complied with the conditions of Sale - This was not a Cash Sale - & in such case the goods are usually delivered before the endorsed Note is demanded - This was done by Pltff in reasonable time - The Defendt failed in his part because the goods in question happened to rise in value - Pltff was vested with the goods from the moment of adjudication - 3 Ch. Comrl Law. p. 273. - The Note tendered is proved to be a good Note - and there is no room to say that the Pltff's character for Credit was ever doubted - The Defendt ought to have put the Pltff in Demeure before he sold the property -

273. Chy. vol. 3

№463
Ex parte
Jos: Rassette } on Dep[t] of confirm[n] Dep[t] drawn up not sent

№ 931.
M[c] Gessis
v
Desbrois masson } on report of Exps — Pltff asks for Dep[t]

№ 972
Gwinne
v
Gillies } action for goods — on law
M[r] Brunean for Defd[r] states a settlement of accts to which Pltff says, that there was an error in settlement this wrong, as the action should have been to set aside the settlement & claim merely the object pretended to be due —
M[r] Torrance for Pltff

№ 1255
Tellier
v
Lorimer &c } Action for prise of sale —
M[r] Dumas for Pltff. The Defd[r] have pleaded that there are mortgages on the land & Defends ought to have securd — & 2[d] That the Pltffs have taken possession of land —
Defend[r] submits case

№ 1355
Garet
v
Lefevre &c } action by an Entrepreneur for work done
M[r] Gerrard for Defend[r] — There is no solidité stipulated by the Defend[r] in this cause, & Defend[r] can be condemned only for their respective shares — there are only 7 or 9 Syndics sued — & condemnation demanded of them for the whole

№1778.

Roi
Granville
& Decloseaux Intervs

action hypothecaire

Me Lafontaine for Plff. Deceased gave the land to Duclos on rente viagère & Deceased sold a part of the rente to Plff. in 1817 an arrangement made by Duclos, the debtor w. Plff who acknowledged to owe the rente & Duclos sold the land to Defendt who bound himself to pay the rent to Plff. The Interv's party comes in now to guarantie Defendt & who sets up an objection of a domaine Congéable on the land — but the act is not authentic, being executed before one Notary & not two. There is besides a novation by an act between the creditor and Duclos, by which the latter cannot any longer avail himself of his exception — it is no longe the same rente, which he agrees to pay at different articles & in a different manner & during the lives of different persons — Such new contract would have discharged the Caution under the former Contract — №291 Pothier. vol. 7. Poth. obl. 549. & 560 — The new act is also insuffte as not having been signed by Duclos — no conclusions for Caution —

Me Rollin for the Interv's parties — says. That there existing a Dower on the land they ought not to be bound to pay without Caution — The Contract of ~~1815~~ 1795 ~~between Durand & Venne~~ this Dower ~~was~~ attached the parties having married without Contract — The act is authentic, altho' one of the witness could not write this is no defect — 1. Bouj.e — 478. art. 12 There is novation here — There is merely a change in the mode of payt of the articles —

№ 2257
Duchenois
v
Boulbee

On report of Experts –
Mr Lafontaine for Pltff contends that he ought to have Judgt for the Costs –

№ 1435
~~Brown dat~~
v
~~Barsalou~~ –
Marchessau
&
Robert dus

action on Sentence arbitrale –
Mr Lafontaine for Defendr Pltff. asks for 1000$^{\text{tt}}$ there is no such sum mentd in Sentence arbitrale, as to the sum of 1100$^{\text{tt}}$ – Defendt is bound to pay only one half according to the terms of the Sentence arbitrale – for the payt of this sum the Children of the first marriage as well as Defendr are equally bound –

To this Pltff accedes –

Mr Lafontaine contends that Defendr ought not to pay the interest – as by the quittance of 15 Febr 1834 – discharges Defendr of all the interest – ought to pay ~~only~~ the Costs on the last Suit, as no demand was ever made for these Costs, & were not even taxed when the action was instituted. –

Mr Bruneau, for Pltff, agrees that Judt be given only for the half of 1100 – with the half of Costs in the two actions – & costs of the arbitrage – that the interest ought to be allowed from the date of the receipt –

№ 1075
Barsalone
v
Beaudry dus
&
Peddie, Cur

action to recover amt. of assurance –
Rossiter for Pltff – Pltff's husband sold the property & by contract the purchaser was bound to ensure the property – Kelly sold to Hunter, & ~~Hunter~~ transferred the debt due by Hunter, to Peddie for a debt due by him to Peddie – Peddie took possession of the property, and

paid

paid the interest due to the Plffs until the property was burnt – Peddie having possessed the house, was bound to the same obligation of Insurance the same as Kelly & Hunter, & the right of Plff must attach upon the property what now represents it, as it presum to Peddie, –

Mr Buchanan for Defr. Peddie – Kelly was a debtor to Peddie – Kelly sold to Hunter, and transferred what Hunter owed him to Peddie – The Plffs. represent the seller Thibaudeau, as his heirs, who sold the land, & were the bailleurs de fond – The Insurance made by Peddie regarded merely his own interest, as he had a mortgage on the house for the debt transferred to him In this Peddie was not the negotiorum gestor of the bailleurs de fond – Peddie altho' he insured the property as his own & rec[d] the money as such, yet he had a right to make the assurance in this way – There can be no subrogation on this money. as Police cannot be extended to the property – 4 Boulay Paty. 222 when insured property is burnt ~~insured~~, the money arising from Insurance bears no priviledge, but money must be divided as money – Peddie was not bound to attend to the interest of any person but to himself – Merlins Quest. Droit – Vo Stipulation pour autrui – 9[e] Vol – If there had been any surplus it must have belonged to the creditors of Hunter, & divided among them as mere la livre

Phillips Insurance 41 – Hughes. p. 51 –

Rossiter in reply – while the property was not paid for to the original bailleur, he had a right to look to the property, and what represented it. –

Thursday 18th June – Fete Dieu

Friday 19th June.–

Pres.t
all the Judges.–

No 630 Preston v Gilmore	Judgt for Pltff
No 1047 Donegani v Aaron –	Pltffs mo. to amend rejected
No 61 Proudfoot v Clerken –	Judgt for Pltffs
No 197 McVey v Dillon –	Judgt for Pltff – for balce debts Leguens Debt
No 695 White v Hoadley dal	Judgt for Pltff
No 858 Robb. – v Deshautels	Judgt for Pltff. £50 – damages –

No 1007. Reid & ux v Molson —	Judgt for Plffs. £7. 10 damages —
No 763 Debrisat v Laurier —	Defendt. pleas of Exception dismissed
No 1627. Ermatinger v Gorrie —	Action dismissed
Mittleburgh v The City Bank	Action dismissed
No 977. Rodier v Lusignan —	Judgt for £15. —
Smith v Field. & Mills. oppt —	Opposition dismissed
No 583. Mc donald v Watson val	Action dismissed
No 2591. Glines v Douglass & contra	Judgt for Plff

№ 2044. Guichaud & al vs Baker —	Objection to the testimony of Mr McCrae maintained
№ Bourdeau vs Ste Marie	Pleas of Exception dismissed. —
№ 888 The King vs Carter & others Justices —	On certiorari — Conviction confirmed. —
№ 1328 Pothier vs Roi —	Judgt
№ 626. Blache & Arnoldi &	action dismissed
№ Blache & Dorezani & Arnoldi & Cant —	Action en garantie dismissed
№ 1871 Cotterill vs Furnissoe	Court held the Defts were bound to pay the freight and Storage of the goods sold

No 74. Torrance et al v Campbell -	Judgt for Plffs -
No 1539. Benoit - v Guilbault. & Benoit. opp.	Opposition dismissed
No 759. Kidd et al v Ross et al -	Judgt maints Defendts plea -
No 979. The City Corpn v Delisle & Delisle	Judgt ordering a peremptory mandamus.
No Scott et al v Laverty & Megorian opp.	Opposition maintained & main levée granted of the effects seized as belongs to partnership. - Dissts Mr Justice Rolland.
No 475. & No 681. Belts. v Jones and Jones v Belts	action of Belts. v Jones, dismissed - and Judgt for Plff in action of Jones. v Belts. for £125 - damages. -
No 610 Kaunbz. - v McKillip et al	Order for an attachment

Saturday 20th June 1835.—

Pres.
All the Judges.—

No. 374 Alliance Co vs Owston	On Pltff. mo. to change conclusions of plea— mo. granted— Dist. Ch. J.—
No. 2356.— Jones vs Hobbart	Judgt for Pltff—
No. 302 Clarke & wife vs Talon—	Judgt. for Pltff. Security to be given before exon
No. 1355. Jarret vs Lefevre et al	Judgt for Pltffs—
No. 2257. Duchenois vs Bouthen	Report confirmed— Pltff to pay Costs—

Archambaud
Devos & Solicrs
Deblenry oppt

On motion of the oppost – that the Sheriff be held to intervene in the Cause, & to save him & the trouble occasioned by the objections raised to his opposition by the Pltff to the executing of a title deed to the oppost of the lot of land & premises adjudged to him by the said Sheriff; and also why the said lot of land should not be sold at the folle enchere of the said Pltff – in as much as the said oppost by having become the adjudicataire of the said premises was entitled to have & obtain the possession thereof in the same state and condition as they were at the time of the seizure and such as described in the Quebec Gazette, & the notices & advertisements of the sale, whereas on the Contrary, the day preceding the said Adjudication, without the knowledge of the S. oppost the Defendr had caused the window sashes of the house built on the s.d lot, as well as the partitions, chimney pieces & fronts of chimneys therein and a great part of the fences on the land, were carried off – whereby the said house is rendered uninhabitable & the said lot of land of less value & damages done thereon to the amount of £125. – And further because the said Sheriff is bound to deliver the lot of land such as described by him to the adjudicataire

Mr. Scott for Sheriff – Contends that Sheriff is not answerable for the injury complained of, that he is not the Commissaire known under the old law, and has no charge of the property, which remains in the possession of the Defendt until adjudication –

Bleury in reply – The adjudicataire can look only to the Sheriff, who is bound to deliver what he sells, & must be answerable for all Damages of this description –

October Term. 1835.

Thursday 1st. October.

Present

Ch. Justice Reid

Mr Justice Rolland —

~~Mr Justice Gale remained at Three Rivers to do duty~~
for Mr Justice Vallieres who was indisposed

No 434

Charbonneau
to
Laflamme
&
Laflamme opt

On opposition dismissing opposition
Mr Irvine for Pltff says no service
made on oppos
Mr. McDonell for Oppt — the documents
filed prove the oppos right sufficiently —

Bechard
vs
Girardin

On Mr. Mondelet's motion to re-open the
Enquete on acct of the absence of the pltff's witnesses
at the Enquete sittings;

Mr Lafontaine for Defendt objects — as time had been
given to parties to produce their witnesses — & no sufficient
grounds alledged for non-attendce of pltff's Witt — refers to
36: 37 & 38 Sect of rules —

Friday 2d. October.—

Pres.—

Ch. Justice Reid
Mr Justice Rolland

N° 2540
Wm. Cliff
Geo. S. De Beaujeu
et al'

Action for trespass and ejecting Pluff & family from a certain Mill— Trial by Special Jury

Mr Boston for Pluff
Mr Mondelet for Defendts.

Evidence
1. Contract 13 July 1833 between Pluff & Defendt for building a mill by Pluff for Madame de Beaujeu— to be delivered 1 May 1834—
2. Protest by Pluff agt. Madame De Beaujeu, offer to deliver up the Mill— dated 24th. May 1834.—

George Ashley— knows Pluff built a mill for Mrs. De B at River a Delisle— there were additions made to the Contract— 3 runs of stones— The Pluff & his wife and children occupied the Mill for 5 months before it was completed— Defts. visited the work from time to time as the work advanced— The Mill was ready & going on 1 May '34— That about 26th. april the Defendt. came there & saw mill tried & it answered very well. & they ground 8 bushels ps hour— there was plenty of water & running over the dam— The Defendt. seemed pleased with the work— Pluff went to Montreal & left Mill in charge of Wife to take care of it— The Pluffs wife was there in the Mill, rather unwell with children That on the 26 May the Defendt. came there with some men, & ordered Wife out of the Mill— Wife says he had not been

him P. — Defendt pushed W. out — he also pushed out one Prior another of the men, who complained also he had not been paid — The Defendt went away & came back a second time wt some bullies wt him — he also brot a constable who arrested the Pltffs men, & ordered them to mortimal. —

The Pltff had ~~att his~~ a large collection of furniture, tools, bedsteads, materials, provisions, tools & other articles to the value & amount as he thinks of about £200 — There were also some valuable plans — Wt was 3 weeks & 4 days in Gaol —

X

Has no right to have any good feeling to Mr DeBerger. There ~~cotools~~ furniture was partly in the grist mill & the tools in the saw Mill — The Pltff is now indebted to Wm for his work at that Mill. — Expects to be paid if the Pltff succeeds in this suit — The Mill had been kept in operation 2 days some night — The toll was put into the toll-room — That it was Wm & Prior who set the Mill agoing — Defendt came then & ordered the Mill to stopt — when he went away, they set on the Mill again —

James Prior, one of workmen employed by Pltff in the Mill — The Defendt used to superintend the work — knows that Pltff & his family moved into the Mill & passed the winter there — the Defendt used to go into the Mill & saw them there. Pltff had furniture in the Mill, beds, tables, chairs & tools & plans — Pltff furnished tools to Wm & another to work with. The Mill was ready & finished by 1 May 1834 — and Pltff told Defdt so — a few days before 1 May, Pltff tried the Mill & found it to answer — There was a toll room, & Pltff ground grain & put the toll in the toll room — while the Mill was going, & ordered the Mill to be stopped immediately — it was stopped as soon as the wheat in the hopper was ground — There were three

two

two pair of Stones going — the Mill was constructed for 3 pair Stones — The Pltff was present at the time and offered to give up the Mill to Defdt But Defendt did not receive the Mill cannot tell the reason — That Pltff was anxious to get a settlement in order to pay his men — Defdt promised to pay the men when the work was done — That Defdt did not owe any thing to Wm Pltff — Pltff went down to Wrexham & left the Mill in charge of Wm & other men — & gave directions to shew the Mill to Defdt in case he came there before his return — That on the Monday morning about 25 or 26 May the Defdt came to the Mill, the doors were locked of the Toll room & the rooms — Defdt took the key of the room up stairs & the key of the front door of the Mill went up towards the dam — Wm met him & asked him to get his wages of Defdt refused — and desired Geo. Ashley to go out of doors — & he did — Then desired Wm to leave the Mill, & laid hold of Wm by the collar in order to put him out but Wm resisted — he then called to his assistance his Servant, one Brunan who laid hold of Wm also — in order to turn him out — that on this Ashley came in and interfered, when Defdt left the Mill — That Mrs Cliff came in, & he desired her to leave the Mill, & she refused — That on this Defdt sent a Constable & had Wm & the other men arrested, he also brought some bullies with him — does not know their names but points out some persons in Court as the men — the Defendt & other men were carried before the Magistrate & were by him committed —

Cannot Value the property of the Pltff in the mill, but thinks them worth hundreds of pounds — That Mrs Cliff was at the time in bad health — she had 4 Children — 2 were at School, & 2 were with her —

X

W. was Defts Miller — That Mill was not put in operation after Defts ordered it to be stopped — The Mill had been in operation in all about a day & night — They started it on the Saturday night at ten O'clock — and again on Monday morng —

Was present on 17th May when Defts came there w. two men one Jas McArthur & another, they examined the Mill —

That Cliff has not yet got him his wages —

Gaspard Bertrand, blacksmith — knows that the Mill in question was finished in Spring 1834 — Knows that Cliff went to Montreal in May 34 — He left one Peter a Scotchman in charge w. his wife & children — The Cliff had his goods effects & furniture in the Mill — W. was in the Mill & heard Defts say he wanted the Mill. The men &c they could not give up the Mill without their money — Defts then laid hold of some of the men to turn them out The Defendt went away & came back w. Et. Massiot James Grenier, Patrick Drennan & the Constable & took the men prisoners — they were sent away prisoners That the next day or 2 days after he saw the people of Defendt Massiot & Pall. Brunet & two others w. him who had taken Mrs Cliff out of the Mill on a bed & laid her on some chips near the place — W. invited her to go to one Madame Rangers — but she refused — Did not see Defts there at the time, he came there soon after and offered to carry her where she would go, but she refused — W. saw the furniture, the beds & other articles laid in the road by these men — That Mr Purcell took Mrs Cliff to his house, & Defts directed those effects to be carried to Purcell's where Mrs Cliff

was

saw the Defend^s at one time near the effects — That among the persons were one Grenard, Paul Martin — That men slept that night in the Mill. — thinks they were there to prevent people from entering the Mill. —

&

That Defend^s offered to put Mrs Cliff to board at Mrs Rangis wt her children, or where else she chose — offered to carry her in his Calash, and to carry her effects into shop of Mr — Knows that Defend^s sought a place to put Mrs Cliff —

That Purcell appeared to take part wt Mrs Cliff — has seen Purcell in the Mill —

That the Defend^s Millar came to take possession of the Mill about same time —

That while Defend^s men were in the Mill the habitants went there to get their grain ground —

Pierre Daoust. Lives near the Mill built by Cliff — the Cliff & his wife & family lived in the Mill — the Mill was ready about 1^r May '34 —

That Prior & Astley were boarded at house of Mr — That Defd^s asked of Mr to take Mrs Cliff & her family for 3 days to his house, as his Millar was coming to take poss^n of the Mill — The Mr consented — but on his demand of Mrs C — would go to his house, he understood she refused to do so — That some persons brot a cart load of Mrs Cliff's effects to his house, but he refused to receive them & they carried them back — The Defend^s was present desired them persons to unload the load at the end of the

bridge

bridge and directed them to be carried back into the Mill —

Saw Etienne Messia — Paul Martin & Jean — were there — ~~Defendt's~~ also Mr Jh Rousseau & Patrick Brenan — Defendt had there men boarded at house of Work for 4 or 5 days as they had some business at the Mill. —

~~x~~

Antoine Lalonde — Knows that the Mill was set agoing by the Millar of the Defendt — Knows that Pluff & his family lived in the Mill —

Charles Sabourin — was at Mill on 26 april 1834 when Defendt was there — Pluff was absent — There were two men of Pluff who boarded at Widow Ashley & Prior's — He went at 8 oclock that day to the Mill, as he expected to get money — when Defendt laid hold of the Widow by the collar and desired him to go out of the Mill — & he did —

~~Knows that 2 or 3 days after the wife of Pluff was put out of the Mill~~ — saw Mrs Cluff & her effects out near the bridge — ~~[illegible]~~

The Pluff had a quantity of furniture & effects in the Mill, and also a number of ~~tools~~ suitable his trade — saw all these effects out doors at different times during last Summer, near the bridge

Wm Pursell — Schoolmaster — lives near the Mill — Knows that about 26 April '34 — the Mill was put in operation by Defendt — On 26 May, We heard that Defendt had taken possn of the Mill by force — the Children of Pluff were at the School at the time, and

Mrs Cliff sent for Wm he did not go, but his mother went to her — saw same day some men in the mill — Massia — has heard him called a ruffian — ready for any work — Jas Grunsel — Paul Martin — Jn B.L. Russon & Patk. Donovan — saw Pltffs men in the mill, who were afterwards arrested by orders of Defdt — After this, Wm went to the mill to see Mrs Cliff — she was in a small room wt her family — she was alarmed very much — three men were in the mill — Wm stopt all night wt Mrs Cliff & his mother — that nxt day he saw Defdt — and his men in the mill — Mrs Cliff was then unwell & unable to go & get provisions — That Defdt endeavoured to persuade Mrs Cliff to leave the mill, that it was her intent to do so — and if any thing happened it would be her fault — She asked him if he had any authority, he said he had not — but that he must have his mill, and if she did not leave the mill he would take it by force — Mrs Cliff & she was sick & requested Defdt would let her be until her husband returned — That the mother of Wm remained wt Mrs Cliff the night of 27th inst — the Defendt was in & out and about the mill — On the 28th Wm was afraid & was shy about going in & out, but was particularly requested to do so by Mrs Cliff — He heard that Mrs Cliff was carried ~~the~~ out the mill went ds and saw her on her bed near the foot of the bridge — in the same state he had seen her in her room — Defendt was at the head of the bed & the men in his employ seeming to wait for Wm — he went up to her & asked if Defdt had hurt her much, she gave a sigh

of

of assent, and Wm offered her his house which she accepted and he carried her and her kids to his house with her children who were crying, and the scene was distressing — there were many people looking on who seemed to pity Mrs Cliff —

Mrs Cliff had some cloaths on — her shoes were off — Heard Defdt say to Mrs Cliff if she would not leave the Mill, he would turn her out, as she had no right there —

Knows that Puff had a good deal of furniture and a great variety of plans to which he attached great value, and a quantity of tools. — Saw Defdt actively employed at the time his men were taking the things out of the Mill — Defdt put a quantity of these things in two Carts which came to house of Wm — when we refused to take these things into the house — the road surveyor forbid the things being left on the road — The Defendt had the Carts unloaded then, and he saw Defdt walking backwards & forwards near them — does not know what became of these effects afterwards —

Knows that during this time Puff had gone to Montreal to endeavour to effect a settlement wt the Dfts. Dr Beaujeu

Knows that after this the Defendt & his men remained about the Mill, and Defdt said that he would detain the Mill & the Puff should not be allowed to enter it —

When Puff returned, he refused to take possession of his goods that had been left in the open air, & to allow any one to touch them — The Puff seemed to be under alarm —

x d

Wm called Wm. Puff at his attorney, at different times & again this morning & communicated the name of a Witness who was in town, who he understood had seen something of this business —

x

Heard Defdt propose to Mrs Cliff to go to Mrs Rangers for 2 days and he would support her until her husband returned — Defdt offered to get the Doctor for Mrs Cliff, but she refused to accept one — Mrs Cliff had her stockings on, but not her shoes, & was partly dressed at the time —

That when Mrs Cliff said she would not leave the Mill, Mr said, she was right —

Defdt offered lodgings for Mrs Cliff. at Sabourin's, & at Ranger's — but she refused to go there — & on the 28th when she was put out Mr took her into his house —

Mr did not make up any parcel of Mrs Cliff's things nor carry any bundle with him for her — she took the clothing she had on the bed with her — Mr assisted in putting her into a Cart to go to his house —

Knows that Defdt Millar at his furniture was there on the 27th —

Writs protested agt Defdt for having ~~known~~ left the effects at his door — it was served on the 12 June after — the Notary owed him money & allowed 30/ for this protest —

Saw no tools whatever among the things that were left near his house —

Jos Bte Brabant — says nothing —

Pre Lacombe — was employed by Defdt or Millar, knows that ~~Defendt~~ Mrs Cliff left the Mill when Mr went there as Millar for the Defendt — Complt closed his evidence —

Defence —

The Defrs. No. 14. 15. 16 Pltfs. pass[n]. The bare detention by a person in the name of another, is not a possession which can be maintained agt. the true possessor. —

Evidence

1 Protest by the Madame de Beaujeu of the Pltff dated 3[d] May 1834 —

Michel Christie — Ks. Defrs. who is agent of Madame de Beaujeu, Seigneuress. Knows that Pltff has been required to leave the Mill, it was on the 26[th]. May 1834 — defrs. offered to Mrs. Cliff if she would leave the Mill, he would take her to any place she chose & pay her board until her husband returned — either at Madame Rouges's, Dorant, or Labonnie — Mrs. Cliff refused — That next day W. was required by Defrs to tell Mrs Cliff to leave the Mill, she sd. if he had any authority she would leave the Mill — so that she remained that day — The next day she left the Mill, but he does not know in what manner — Saw Purcell there, he was apparently very active on behalf of Pltff Cliff Saw some of Pltfs effects which were carried into the Defrds Saw Mill — There are tools, with a bundle of plans, some chairs — tables & other effects — which are in good order —

Fo

Found Mrs Cliff in bed when he went on 27th for Defendt does not know whether she was sick or not —

In 3d Pairier, Defendt is agent of Mrs De Beaujeu — Knows that Pltff caused the Mill to work and measured the multure with a gallon measure — The Pltffs workmen were still in the Mill — was there on the 28th May, when Mrs Cliff left the Mill — the Defendts she wished to go out, and 4 of Defendts men carried her out — Mrs Cliff appeared to object to going in Defts Calash —

Saw Mrs Cliff get into another Calash & another person assisting her — Saw Mr Pascal there, who appeared very active on her behalf Mrs Cliff was dressed

Saw a quantity of Pltffs effects in the Saw Mill, furniture, papers, plans, chairs, Kitchen articles, spoons, knives, forks & other articles, & are all in good order — Saw also a quantity of wools in the hopper of the Mill — Saw 15 bundles of plans for mills of all kinds —

F.

There were 4 of Defendts men who carried out the Mrs Cliff on her bed — her children were there & appeared to be crying —

Louis

Louis Boule ~~Louis Boulé~~ — was present when Defd. requested Mrs Cliff to leave the Mill on the 28 May — he offered to Mrs Cliff, if she would go to any place in the village he would carry her there — the Defendt offered a Carter to her, she did not appear to consent — does not know whether she was sick or not — She got out of her bed & mounted in the Calash — she was dressed and it seemed like a person who was not ill. but affected to be so —

There was a tall man who accompanied Mrs Cliff — he took an interest for Mrs Cliff and carried a bundle of effects in his hand. —

Has seen a variety of effects in the Saw Mill belonging to the Cliff, such as tables, chairs, books papers, plans, & other articles —

That Mrs Cliff was carried out of the Mill with great care — and the effects that were taken out did not appear of great value —

£ —

— He had grain to get ground at the Mill and was there on that occasion, & had no concern in the matters that then took place — When Mrs Cliff got into the Calash, saw she had her shoes on —

Pierre Lacombe, Defd. is agent of the Seigneurie He is the Millar of Defd — was in the Mill & his family effects arrived on the 27th the

Puff's wife had not then left the Mill — Has seen a variety of effects belonging to the Puff in the Saw Mill — cannot speak to their value —

Saw Purcell at different times, he appeared taking some pains, but does not know for whom —

Knows that Puff had put the Mill in motion before this

Here the Court directed the Case to be continued till to morrow morn.g at 9 O'Clock, and ~~Lundoh~~ that the Jury be committed to the charge of the Sheriff

Saturday 3. October

Pres.t

Ch. Justice Reed

Mr. Justice Rolland

c. N.o 2540
Wm. Cliff
Geo. R.d De Beaujeu
& al

The Jury having been brought into Court & called over answered to their names. —

The Jury being called over & appearing —
The Defend.t proceeded with his evidence —

The Defend.t produced a writ of Saisie-arrêt ~~was produced~~ and out by one Tebulon of the goods effects of Puff in the hands of the Defend.t dated 21 April 1834. & served 24 April. — also the declaration of the Defr as Tiers Saisi —

Franc. Xav. Gareau — was at Defdt. on 26 May last when he went to take possn. of the Mill — Defdt. went into the Mill & came out again, directed Wits. to bring on the effects he had. ye was Defendt. bed. and as Wt was carrying on the bed he was opposed by Jas Prior, who laid hold of the bed & pushed back the Wit — he took up a ~~stone~~ spear and threatened Defendt. and laid hold of him, when Defendt. called to his assistance his servant Brennan — That Welbrennan put up the shirt over his elbows & tied up his girdle round him as appeared to respond to resist the Defendt. These men on seeing Defendt. come to the Mill went there — Wt saw Mrs Cliff there — she appeared in good health, she had a broom in her hand, appeared in a passion — The Wt carried part of Pltffs effects on the ~~Tuesday~~ & Wednesday to the Saw Mill

That on Monday night Wt slept in the Mill — ~~That next day several of Defts effects to Mrs Cliff to put~~ That Defendt. That Purcell was there & appeared to counsel Mrs Cliff & was always with her — Saw Mrs Cliff bring down on her back carefully — Purcell packed up a parcel of things which he carried wt him & accompanied Mrs Cliff — she appeared in good health — she got up and went into a Cart — she was dressed, had shoes on & a cap on her head —

Benjamin Fawcet — was at the Mill on 28 May. after Lawsons the Sheriff had entered there — he had his wife, ~~two~~ 5 children & his servant wt him — Saw Purcell there — he was very active, & taking part for Mrs Cliff — Saw Sundry effects of Pltff. which did not appear of great value, which he values at 10 dollars and which were carried to the house of Purcell —

Evidence for Defendt. was closed —

Mr Boston replied —

Verdict — £5 — Damages & Costs —

No 763
Debusat
v
Lorieux —

on Defendt mo. to discharge exemption. as Cause has never been enrolled for Enquête

Roderi for Pltff. There was no issue upon which an Enquête could be had, as only 2 Exceptions were made & were dismissed —

No 1874
Annesley
v
Thrasher

on Defendt mo. to quash process of Capias as affidavit does not set forth the nature of the debt

Doris call for Defdt. The nature of the debt must be shewn — The ordonn^ce requires certain requisits but others may also be ~~required~~ required that party be entitled to shew a legal demand —

Grant for Pltff. The ~~affidavit~~ debt law is positive and such as the law requires

No 1863.
Coiteux
v
Brunet

mo. that proceedings be suspended till fourth copy of Serbe be delivered —

No 231
Sutherland
v
Bradford

On mo. by Defdt. to ex. Pltff. on facts & art. & as Pltff has changed his domicile that counsel be held to declare his domicile —

M^r Scott for Defendt. in support of rule

M^r Barrett for Pltff, the rule contains 2 points, ex. of Pltff on facts & art — This depends on the equity of the Court — the party might have made the proof of the facts demanded

Ex parte
Corporation of the
City of Montreal

On motion of Mr. Day of Counsel for Petitioner the City Corporation for a rule on Mr Leon Bernard Leprohon to shew Cause why a Writ of Mandamus should not issue to him commanding him to deliver into the hands of Richard Dillon of Montreal, ~~commanding him to deliver into the~~ Clerk of the old and New markets in the City of Montreal duly appointed by the Common Council of the said City, the charge and custody of the old and new markets of Montreal with all and every the papers, paper writings, accounts, and books of account belonging to and connected with the office of Clerk of the said Old and New Markets, and also the keys of the said Old and New markets and of the weigh houses thereunto respectively attached, and the said weigh houses ~~thereunto respectively attached~~ and scales balances weights and other articles therein being and thereunto belonging.

It was stated in support of the motion, that the act of Incorporation. 1 Wm 4. ch. 54 - Gen. 3 gave it authority to appoint Clerks of the Market - The preamble to this Stat. and the 5. & 6th clauses shew the authority vested in the Corporation to appoint all officers of a ministerial nature, such as Clerks of the Market in this Country are - In England the Clerk of the Market was to some intent a Judicial officer, he held a Pie-powder Court, and regulated weights and measures, powers which Clerk of the market does not possess in this Country - The St. 39. Geo. 3. ch. 7. su. 8 vests the right of regulating weights & measures in an officer to be appointed under the authority of that Statute - The duties of Clerk of the market are explained by St. 47. Geo. 3. ch. 7. su. 14. - The Corporation are proprietors of the market, & the right of appointing a Clerk is incident to the right of property. 3. Bac. Ab. tit. Fair & Market (C) Com: Dig. tit. Market (F. 2) Petersdorff. Market & Fair. - p. 560. -

Monday 5th October. —

Prest.

The Ch Justice & Justices

Pyke & Rolland —

№ 2563

McDonnell & Reffenstein — mo. to dismiss action for want of procedure

№ 348

Menard & Geoffrion — action en separation de corps & de biens

Lebrun for Plff, reps to evidence in cause

Bleury for Defendt — reps to evidence to shew that the demand is unfounded. —

№ 530 & № 552

Desjardins & Labelle & al — Papers submitted —

№ 1189. № 93. № 385

Desjardins & Paquet & Garants — On question of security demanded by the Defendt —

Roy & Langevin & Pigeon — In 3 Causes —

Lafontaine for Plff — Pigeon claims privilege on the effects seized, as bailiff for same he had sold

Plff contends there is no privilege, and in any case

the

the proprietor of the house is responsable. Poth. Louage
Nº 244 to Nº 250 — Fr. Gr. art 176. 177. Dasp. 619 —
Pardessus. 4 Vol. Nº 1288. to 1292 — Prov. Cr. Chattel —
1 Vol. 619. 683 —
Bleury for Appts — ~~Dan Bleury~~ claims priviledge on the particulars effects he sold to Defendt —

Nº 2724
Truchon
+
Gauthier

} on merits de novo — Les answers of plff ~~to Cadet~~ demand de caution —

Lafontaine for Defendt — contends that Debt appears to be paid & that action shd be dismissed

Nº 878.
Mc Vicar
vs
Dawes

} On Report of arbitrators —

Mr Smeaton for Plff. says hom. of Report as to the amount of damages, but that certain improper matter contained in the said report be rejected —

Boston for Defendt — The report must be taken in toto, and cannot be mutilated or changed —

on till to morrow.

Ex parte
On motion of The City Corporation

} The Court granted the motion for a Rule to shew Cause. —

Tuesday 6th October.

Pres.

Sh. Justice Reid & Mr. Justice Rolland

McVicar vs Davies —

On Report of Experts

Mr Boston for Defendt objects to the report Pltf. No. 160. Obt no other damages can be allowed, but such as grow immediately out of the act occasioning the damage — Have a large sum in damages have been given without shewing on what principle nor what objects these damages were assessed — The Defendt — Therefore moved to set aside the Report for the reasons therein stated. —

Mr Sweeny for Pltff, moves for hom. of report except as to certain irrelevant parts not consistent with the reference made to the Experts —

No. 1464

Drouin vs D'Aoust —

On transfer of Obligation — on merits

Mr Laberge for Pltff — plea to this action is payment, but no legal proof was offered, Pltff is entitled to Judt —

Mr Scott for Defendt — The answers of the Pltff to the faits & articles shew a right the Defendt had to be admitted to prove payment by verbal evidence — Demat. vs — Commencement de preuve — Rejs — Vs — cod.

№1298
Picotte
v
Archambault
&
Archambault
mis en Cause

On mo. of Pltff for contrainte par corps agt the Deffdr in payt of the moneys rect by him as Notary —

Mr Lafontaine for mis en Cause — the demande here is irregular & cannot be granted — The ordr of 1667 does not prononce contrainte agt the Notary, The depot made in his hands is not a depot necessaire — he was the simple procureur of the Pltff in this Cause — agt whom there can be no contrainte as negotiorum gestor — & if allowable ought to have been demanded by the declaration — as in that case the Deffdr. would have pleaded deffaut de — The 5e art. of the ordre N. Dame. v. Contrainte par corps — refers to the persons liable to the contrainte, but does not include the Notaries —

The formalities req. here have not been observed according to the 10e art. after the expiration of the 4 months —

The debt here is not liquidated & certain — The Deffdr here is condemned as a simple individual & not as a public officer — upon which out and oppositions were made by Pltff afsd & other persons having claims on the Deffdrs property — & the oppos. may be set aside, so that it is uncertain what the result may be —

refers to case of Deschenaux v. Ranger in appeal where held that the creditor a right taking an obligation for his debt of goods sold, waived his right of Ca. Sa.

Mr Blewry in reply — The Pltff is entitled under the order of 1667 to his Suit — as Defendt — acted here as a public officer, & the property was entrusted to him as such — The conclusions in the Decln cannot affect the Pltff's right — the action was brot to ascertain the amount of Pltff's demand, and that demand being now established, it is the right accrued thereon which the pltff now seeks to obtain —

Wednesday 7th October. —

Pres.t —

Hon Ch. Justice & Justices Pyke & Rolland

№ 445
Arnoldi
vs
Brunecan

On Pltff's mo. to rejn the Plaintiff's demand to appeals —

Mr Smith for Pltff — Action for medical attendance & all necessary facts admitted — & the course is to submit cases of this kind —

Mr Cherrier for Defr — application heretofore made and rejected, that the pltff has since proceeded to examine witnesses, but has not closed his enquete, no has Defendr been called upon to rejt his Pltff's — & on the result of the enquete only can the Court now judge —

Mr Smith in reply — the plea admits the attendce & the only question is the value of them —

№ 1167
Wilson
vs
Weller

On Defendr mo. to quash process for want of service of —

Mr Driscoll for Pltff — The Defendr has appeared & has given security for the things attached, & must be presumed to have had service of the process upon him

Mr Fisher for Pltff — Defendr has appeared w. reserve but the writ was never served on Defendr —

Wilson and
vs
Weller —

Defendr mo. for security for costs

Driscoll — This mo. too late & waived by proceeding on the cause —

Fisher. Both motions of same day

№ 1311
Beach
v
Dewitt

on objection to testimony of Benjamin Brewster as related to Defendt

Buchanan for Deft – The action is not commenced & relations cannot be admitted –

Borton for Pltff – action of account of a succession of which the Defendt has taken possession without any authority – The witness a necessary witness to prove facts that happened in the interior of the family & also to produce certain necessary papers in his possession –

9 Toller 315

№ 1594
Delorimier
v
Rezner dus

On Defendt mo. to quash the attachmt

Currie for Defendt – The affidavit is not sufficient – The Ordr of 1787 regulates this point & the affidavit must be conformable to it – here the affidavit does not say that the Defendt doth conceal his effects, or that he is on the point of doing it, but that he is in the intention of doing so, but this intention is not sufficient –

The affidavit is made by one of the pltffs without shewing that it was made by himself and with the consent & authority of the other pltffs –

That the effects seized are not the same as those referred to in the affidavit which only could be seized under the writ of attachment in this Cause – and the writ of attachment is different from the demand in the declaration –

M. Ch. Mondelet for Pltffs – The intention of

the

the Defend^r to leave the province is a sufficient cause and the words of the ordonn^ce being, doit intenter, shews that the expressions used in the affidavit are sufficient — The affidavit demands the saisie of the biens effets of the succession, whereas the writ requires the saisie of the property of Defend^r as well as of the effects of the succession. — this not material —

N°530
Dubord^s
~
Bourdon.

Ore Defend^r mo. to discharge the inscription on the role de droit, & that he be permitted to examine certain witnesses —

M^r Gosselin for Defend^r refers to affidavit filed in support of the motion. —

M^r Greene considers grounds stated in the affidavit insufficient, no reserve was made at the time the parts in question were examined to call them up again for further examination.

N°1618
Bourdon
~
Dubord

M^o. granted —

Thursday 8th October

Pres:

The Ch. Justice & Justices

Dyke & Rolland

On motion for a new trial —

No 518

Dowlson.
vs.
Cuvillier —

Mr Driscoll for Defendt — motion too late for a new trial under the rules of practice — Trial had 26th last Sept & mo. ought to have been made the first day of Term after the trial — over-ruled

Mr Hart for Defendt — moves for a new trial on the several grounds stated —

1st & 2d grounds are general —

3d Because a paper was read to the Jury from a newspaper — Graham on New trials 5th — evidence an undue advantage is taken by party or his advocate to prejudice the Jury, a new trial will be granted — 7 East 108 — 3 Bos. & Pul. p. 272. 7 Mod 87. —

4th Illegal testimony was admitted — allowing the Plff of Defendt — to prove that before attach — the defendt appeared impressed with belief that he would lose his debt — bill of Exceptions was offered & signed by the Judge — This evidence proceeds from the Defendt himself & calculated to meet the present claim of Pltff

6 Surprise — all evidence touching the trunk, which had not been communicated to the Defendt previous to the arrest, was inadmissible — This was done to support what Scilly said, & had been told him as true by Mrs Shanks —

7. 8 The charge was contrary to law — depends on notes of the charge kept by the Judge —

9 Probable cause was left to the decision of the Jury — Graham 294 — 1 T. Rep. 493 Johnson vs Sutton —

10 Scully's evidence was strongly impeached — his evidence contrary to what he had given on a former trial. — he was not a credible witness, & this should have been so stated to the Jury — Graham 5 Cowen's Rep. —

11 The Judge did not charge the Jury as to the effect the sending a certain trunk to Lachine might have had upon the Defendt no proof given that Defendt had ever been informed that such trunk had been sent by Plff to Lachine, before he sued out his Ca —

Drscoll for Defendt observed generally on the above grounds as unfounded —

No 1123.

Rhodes vs Bradbury

Ch Pltff mo. for a Conc. Rog. to England

Mr Day for Pltff — a day was given to adduce the testimony of an absent Clerk in hopes of his return from England in suffr. time — the Clerk has been prevented from returning from indisposition. —

Mr Grant for Defendt — objects to the motion — the enquete was closed a year ago — a cause fixed for hearing but on application of Pltff. a day was given to Pltff to adduce the testimony of Jo. Rhodes Jr — who had been already examd — was in the Province when the Enquete was closed — The departure of this Clerk from the Province was 12 months ago, & is now too late —

Day in reply — The Enquete was never closed till Augt last

No 1784
Berry
vs
Brunean
dal

On mo. to reject an exception à la forme
Borlon for Plff, Exception founded on a variance
between original & copy of Declr filed — as
this there is no variance on which such exception can be
founded, as personal service of process has been made
upon him —

Brunean for Defdt. The exception is well founded
and regularly filed — the variance is evident — between
the statement in the declr & the place where service
was made —

No 2246.
Bourassa.
vs
Faille. —

On hearing de novo. —

Cherrier for Plff — action en bornage in conformity
to a P.V. drawn in the Inferior Court — objected that
the Court had no jurisdiction in Inf. Court — But this
is not strictly true — the only instance of want of jurisdiction
in that Court is where the demand or plea the discussion
of real rights beyond the value over of that Court has
jurisdiction — but the simple drawing a line of division
between adjoining lands, has always been practised as
valid — as to the proceedings on the regrets Civils this
Court cannot take cognizance of it — and the Defdt
ought to have pleaded to this action the grounds of his
regrets Civils —

McBrunean for Defendt — The matters demanded by
Judt in the Inferior
Court was not within its Jurisdiction, and cannot bind
the property of the Defendt — and that Court was unable
to carry it into execution, and upon a regrets Civils being
presented, it declared itself incompetent to determine upon
the question — it is therefore to be considered as a Judt
without

without effect—

Mr Sherrier in reply. the proceedings on the regular Court is of no value here, & cannot be set up as this action, [illegible] may be considered as not existing.—

No 410.
Greene
vs
McLeod
&
Jackson

Mr Day for Pltff. question here touching costs on the pltffs proceedings— Dfts has abandoned his objections Pltff now moves for Judt allowing his costs—

No 449
Lussier
vs
Russeldal

On merits — question touching interest demanded

Mr Lafontaine for Pltff. on transactions touching sale of wheat between Pltff & Defendt— There was a difficulty touching quantity of 5000 bushels— this has finally been admitted— the interest remains to be settled— In the settlement of acct in 1831— there was a deficiency of 2000 bushels not credited to pltff— Defts pd the interest on the acct leaving the question of 2000— still to be settled— on 5 Nov. 1831. this settlt made— now that this quantity of 2000 is admitted as due, the interest on this part ought to be pd as well as on the other parts of wheat delivered— there is only the depost of Dupont touching this point—

Fisher for Defendt— the parties proceeded in their transactions upon the principle that only 3000 bushels of wheat had been delivered— subsequent dealings took place on this footing, & even the Pltff afterwards came in debt to the Defendt— there was good faith on both sides— Had the 2000 been then credited in the acct it would have been paid instead of waiting over for several years without speaking about this subject & claiming interest during all this time.—

№ 513
Duff
vs
Crombie

action to declare Defdt. assisted of his right of remeré for a piano forté —

Mr Hart for Pltff, the contract was, that Dft should pay Pltff £25 from Pltff. wt condition to get back the instrument on repayt of the money —

Mr Rossiter for Defdt — action cannot be maintained there has been no delivery of the instrument, it never left the possn of the Defendt. The contract is reserviens and so pleaded by Defendt. The action should have been for breach of a Contract, & not for this claim —

№ 1563
Bender
vs
Jones —

action for damages done to Pltff house by Defendt. his tenant —

Bender for Pltff — lease for one year, wt. condition to keep the house in good repair — Defendt. continued to possess for several years by tacite reconduction and was delivered up to Pltff in a ruinous condition —

Mr Boston for Defendt — when Dft left the house the pltff gave him a receipt for the rent, which was a sufficient discharge of all demands as to the damages now claimed — The lease subsequently made to Mr Lavoix, was given up with the consent of the Pltff — The kind of witnesses produced to support of the demand, while those of the Defendt — are of the most respectable kind — This is a contrivance to draw money wrongfully from the Defendt

№ 1298.
Picotte. vs
Archambault
&
Archambault, mis en Cause —

The Court discharged the rule obt by Pltff — on the principle that it was demand execution of a Judt. for which no conclusion had been taken in the declr — nor Judt. given to authorise it —

Friday 9th & Saturday 10th October –
Enquête days. –

Monday 12th October. –
Prest.
Ch. Justice Rex
Justices Pyke & Rolland

№ 1908.
Archambault
vs
Labelle
&
Roi Interv.

} On motion on part of Mr Roi to intervene in this Cause – being a case of Expropriation &c –

Mr Lafontaine for Plff – the mo. is too late – the Cause is en delibéré –
Mr Chauveau for Interv. prays allowance of Cause between the parties –

№ 719
Clarke
vs
Truax et al

} Action for trespass on Plff's land & damages –
Hall for Plff. The fence of Plff's land at a sufficient distance from the River for all necessary communication by towing of boats – fence knocked down & not repaired
Objects to testimony of one Connor, as being the person who committed the trespass –

Mr Boston for Defdt – no authority in Plff to bring the action – no proof of his capacity – nor of his possession of the lot in question – this is the usual passage of goods by transport to L. Canada – the point in question is particularly dangerous & requires that there should be an open space left

for

for the safe conveyance & transport of goods — a road & communication on public Rivers. Lev. tit. 8. sec. 2. art 9. Domat on public law. Dec. & Ord. & Traité v° Reparation des Rivieres. Ordre of 1669 — Merlin v° Riviere — & Chemin de halage

Domat. liv. 1. tit. 8. sec. 2. Som. 9. p. 46. Cette même utilité de la navigation des rivières demande l'usage libre de leurs bords — de sorte que dans la largeur & l'étendue nécessaire pour les passages & le trait des chevaux tirant les bateaux, il n'y ait ni arbres plantés ni autres obstacles —

Hart for Pltff. The pltffs. here are in possn. and complain of an injury done to their possession, which they prove — a right to pass was been purchased on the adjoining lands by the persons using that communication

№ 1880
Scott & al
~
Proudfoot
&
Smith sel. T.S.

On mo. of Defendt to shew Cause why attachment issued out in this Cause should not be set aside —

Mr Bleakley for Defts. the process issued illegally, The Stat. 4. Geo. 4 by 9 Geo. 4. ch 28 had partially removed the former act — except as to individuals residing out of the Province — no process here against the Defendt

Mr Buchanan. under St. 9. Geo. 4. the proceedings is regular — The legislature must have contemplated the extending the remedy of all debtors whose effects were found within the Province — otherwise the Stat — would be giving no further remedy than was already enjoyed The Defendt may yet be called in —

№ 1440
Blondeau
~
Vve Bedard
&

action on obligation of late Mr Bedard

Mr Bruneau for Defendt There was an act of long standing between the parties, and which is allowed

to

to the Defendt would more than compensate the demand of the Pltff, and the evidence adduced shews this to have been the case — on making deduction of the interest at the several periods when the payts or credits became due — There are several receipts 3 in number of Pltff admits & agrees to be deducted The Defendt can shew from the contradictions in the answers of the Pltff that these answers ought not to be received as evidence —

Mr Bender for Pltff demands Judt for her demand deduction made of what her son has received on her acct and which she admits. —

No. 952
Burroughs
v
Alger } on award — papers submitted

No 1021.
Cotterell
v
Grimley } action for rents — Incidental demand for damages —

Hart for Pltff. The proof of Judt demand rests upon the answers of the Pltff —

Mr Badeley for Defendt has established the erection of a workshop & labor done to the amount of £40 —

No 1326
Forbes
v
Austin
& contra } on award —
Fisher for Defdt parties have exceeded the powers granted them by deciding on the Costs —

No 1426
Wallis
v
Wilson } Judt for security for costs — & Thompson not allowing the other motion for dismissing the Cause —

№ 2178
Bourassa
v
Vandal

action en bornage —

Mr Lafontaine for Plff — the difficulty between the parties is as to 5 arpens — The Defendt has not proved the prescription set up by him. & therefore prays Dismt for an order of bornage —

Mr Bruneau for Defdt — the land of the Defdt has been divided from that of Plff for upwards of 30 years, and that the lands of Plff & others of that place have only 50 acres of depth from the front —

Lafontaine — There is no stat quarré between the lands — no proof — the lands are of unequal depth — none regularly bounded by a stat quarré

№ 824.
Morris & up
v
Menard

action hypothecaire. —

Mr Lafontaine for Defdt — This hypothèque extends to 1824 — & on 2 of the lands — it is claimed from 1813. because Menard was in possession at that time, but not stated to be in possn in 1824

№ 1728 & № 1026.
Mc Corkill
v
Bowker et al
&
Bowker appt
and
Bowker
v
McCorkill

On report of the arbitrators & on merits. —

Mr Buchanan for Bowker moves to set aside the award, as founded on illegal evidence, and taken at a time when the parties had no right to take any evidence in the Cause — That there is irregularity was mentioned & Bowker first only is condemned —

Mr Hart for the pltff contends for the confirmation of the report, and refers back to the proceedings had in the Cause & parties might be examd as Wits under the rule of reference — Merlin Arbitrage p. 298 Caldwell on Arbs 53. — 5 Dowl Rep. 247 —

1 Ryan & Moody N.P.Ca. p. 17

No 2412
Lane
v
Sexton —

action for goods sold

Mr Jo Day for Defendt — The contract is made between Rd Lane & Son & Defendt — whereas under objn the contract between Rd Lane alone

No 2532
Craghwell
v
Evans —

action on 2 promy notes —

Mr Perrott for Defts cites Stuarts Rep. p. 105. & p. 69. — & 145 — the prescription set up must be regulated by the law of the Country where the Contract was made — Prevot Jaunisse. p. 29. 2 vol. Chitty Bills, p. 99. — 4 vol. Irish Stats. the law of limitations of 6 years goes up Promy notes — The pltff has alledged interruption of prescription and new promise to pay — but of this latter point there is no proof —

Objects to the testimony of the nephew of the pltff to certain parts of the pltffs demand

No 2726
Collins
v
Drysdale

action for wages and for money lent

J. Day for Defendt — Pltff was careless & given to drink and her services not worth more than 5/ ℔ month —

Tuesday 13th October 1835.

Prest

The Ch. Justice & Justices Pyke & Rolland

No 170
White
vs
McKinnon

On Plffs mo. for a Com. Rogre to ex. Wt at Kingston

Objected by Defendt as application is too late under the rules of practice, & as the Plff has had an opportunity to ex. his wits already by Com. Rogre

Mr Griffin for Plff, the name of the wits was included in the mo for ex. of other Wt but the Comre could not be sent to more places than one.

No 2497.
Marois
&
St James
&
Pigeonnal. TS

On rule taken against the Trés Saisi on the 20e April last to complete their declaration as to the balance in their hands due to the Defts and also on the merits of the Cause —

Mr Cherrier for Plff moves for Judt against the Trés Saisi that they may be held personally liable

Mr Brunau for T. S. a day was given to the Defendt to complete the work, and until that is elapsed and the work not completed, the Trés Saisi cannot be condemned to pay until the valre be ascertained. —

Sur requete de Dre Laurier — Francois " Besselte. Tobin — } On hearing on petition

No 177 — English — Stewart } action for board and lodging —

Stanley for Pltff — action made out for £60 — in a case like this it is impossible to prove every article minutely — & tenders Pltffs oath as to any small object not proved —

Mr. I. Day. for Defdt — The pltffs demand must be reduced to £24 — a note given by Defdt to one Samuel English, must be deducted — a variety of single glasses of liquors — & divers articles furnished at the Grass must also be deducted — The acct is of two parts, one of Stewart does not sue on his portion —

The Defendt has set up an Incidental demand for various articles of has been proved except two or 3 items, The sum proved is £17. 14. 1 —

Mr Stanley for Pltff — There was no exception taken by Defendt to the proof of the single glasses of liquors, of was furnished under particular circumstances — accts 12 bands of oysters at 7/6 to be deducted — & on the whole accts Defdts claim to exclusive of about £12 —

No 911. Burns — Tobin } action for improvements made on the Defendt lands

Mr Boston for Defendt — The pltff sold certain improvements to Defdt — but these were in a great part in the possession of other persons when Defendt came to look for these improvements — and there was a condition

condition precedent that Defendr shoud be put in possession of the several lots so improved — nor has the the Defendt the means of obtaining any Security or title deed to the these improvements — That one Finlay Fisher has obtained a grant from the Crown for a part of the said lots so improved — he also one Flanagan has obtd a right to another lot —

№ 1427
Cameron
v
Cameron
&
Mc Cameron
mis en Cause

Hearing on Case
Stanley for Mc Cameron — contends proof is insuffe —
Mo. withdrawn

№ 1495.
S. Gerrard
v
Maitland ad
&
Leslie. oppts

Case submitted

№ 1978.
Fitzgerald
v
Hart —

action for damages for a libel and for defamatory language —

Mr Grant for Pltff — goes into evidence in support of the Case — contends that the nature of the Defence is an aggravation of the offence, inasmuchas he has endeavoured to justify the conduct he has observed in regard to his observations on the Pltff —

Hart for Defendr — The first count supported only

only by one witness - & must be rejected —
As to the 2d Count for a libel, it is unfounded, as the expressions do not amount to a libel — & if published, was done by the act of Duff himself —
As to the 3d & 4th Counts there is no evidence whatever
Objection to competency of Anne Blake — the facts stated by her contradicted, particularly by Mr Robertson —
Bethune's evidence - considered to be inconsistent & materially contradicted —
Assessor - took an extraordinary interest in this case —
17. March is the first day in wh Defendt is charged as interfering in this matter — but reports were long previous —

1. Dareau. pp. 99. 100. & 101. —

Wednesday 14th. October. —

Pres.

The Ch. Justice & Justices Pyke & Rollaud

—

№ 1002.

Sequin. — vs. Ranson — } On motion for further pleads — ordered that parties proceed to evidence

№ 1432

Drapeau & Charbonneau & divers Garans } Mr Bleury for Pltff moves for Judt. on the principal demand — ex parte —

Mr Cherrier — Case not in a state to be heard, as some of garans have taken up the fait & cause & have pleaded to the principal demands

№ 227.

Lockwood De Forest & al — vs. Bostwick & al } On merits

Mr Scott for Pltff — action of amount for certain quantities of leather sent to Dfndt for sale — with instructions to sell at certain prices. — The leather appears to have been sold at a lower price than the limits — That Dfendt have paid an amount, & to this the Pltff reply specially —

Mr Day for Dfdt — There is no evidence on the first count to shew the specific quality of the leather — at the time of the writing the letters by Pltff, the article of leather was then high, but afterwards fell very much, & has never risen again to the former value — Dfdt finding the article falling daily in value, sold it so as to avoid damage & loss

This

This was acting for the best advantage for the Plffs & consistent with the duty of the Defendts as Consignees —

There is no allegation of a specific contract to sell at a specific rate, but a general charge — when Defdts amount Plffs then turn round and shift their ground into a special demand and under a special contract, not declared on —

There is no proof as what is the amount of 16 cents but of a sale by Defdts of 9d. Cwts — and nothing to shew but the value of sale amounts to amount demanded.

Mr Scott in answer — the quantity & quality of the leather are set out in the declaration, & the Plffs letters also shew the same thing — The Defendts give no information to Plffs of the state of the market & the declining price of the leather, until the account they have been called to pay

No 1124
Rhodes
v
Bradbury

On action of acct

Mr I. Davis for Plffs in 1829. the parties agreed to become jointly interested in an adventure of goods to be manufactured by Plffs & shipped to Defdts for sale. free of Commission, each party to contribute one half in all advances & to benefit in one half profits previous to this Defendts were indebted to plffs in a large sum of money for goods previously sent them to sell The Plffs shipped between March & Sept 1830 goods to amt of £3456 : 6 — of which were sold by Defdts & large profits realized — The Defendts has filed an acct of this adventure but has joined in it a variety of other transactions not connected with it — Several witnesses exd. the principal Jas Rhodes. the Plffs but from intricacy of transactions the whole must be left to Arbitrators —

Grant for Defts — The action is wrong brought, the transaction here was wt Jas Rhodes Jr who was settled in this Country, and to whom the Pltff forwarded his goods for sale —

Moves to reject the testimony of Jas Rhodes Jr — as interest witness — 1. Wt produces no power of Attn from the Pltff — and it is besides evident from the papers Wt produces that all the goods were adressed to Js Rhodes Jr and in 2d page of 31st Jul. the acct is rendered to Jr Rhodes Jr — There is also an acct marked with the R — also the document DD: which is the order forwarded by Js Rhodes Jr in which he refers to the contract between Wt Brodbelt & himself — also Defts Exh. No. 4 — the proposal for Joint adventure — also letter No. 22. when Wt refers to his not dealing with his own Capital — The letters M. & N — also show same thing —

Should the Court not consider the Merits as interested he must shew certain inconsistencies in his evidence — He Wt says that after the proposed agreement made by Defendt the Pltff accepted it — but no proof in writing of this — That Defendt in any Case not bound to furnish more than his proportion of advances —

3 Camlps. 317 — where Wt purchased in his own name Mr Bowman in Fortune — The agent cannot bind his principal by entering into a partnership for him —

Mr Day in answer — Rhodes Jr was merely the agent of the pltff — cites 2 Vol. Starkie Ev. p. 753. 4 — on competency of agent. also p. 767. 8 — 3 Vol. p. 1730. 1731 — Roscoe — p. 84. 5 — The action here is proof of agency —

№2474
Wilkie
vs
Galt

} return for a Bon -

Mr Lafontaine for Defendt There is sufficient evidence to dismiss the action, at least to admit Defts to his oath - The parties were in the habits of borrowing money from each other for part of their own & for other matters - The Defendt has pleaded payt & several settlements of acts after the making of this note -

Mr Nye for Plff. There is no proof of any settlement of accts between the parties subsequent to the making of this bon -

№379
Boston
vs
Bricault
&
Gabourie
opt

} Per Curiam

Mr Lafontaine - for Oppt. Defts married in 1808 w.t out contract - y- 8 months after his father gave Defts a certain sum - & Defendt sold afterwards but the Donation was not altogether gratuitous, but to be quit of Defendt for a certain reliquat de Compte The oppt contends That this act had not the effect of a Sale, & That Dower attached to it - no sum was specified in the Donation & the Defendt was the Creditor of his father & it ought to be considered as a propre de Communauté art. 26 Coutt. such act not subject to Lods & Ventes - & is to be considered as a succession anticipée - Poth. Comté №139. - les accommodemens de famille sont propres de Communauté. - The oppt holds this land by exchange with Boston for Plff. The land seized is not the lot of land which was given in exchange by the Oppt but another

another lot— and on qt. Oppt. can have no claim — and if troubled, it could be only for one half of the land he now holds —

The Donation here made by the father of the Defdt to him in consideration of a debt due to the Defendt and was really a Sale to the Defendt— and became a conveyance of the Community between Defdt & his wife —

Thursday 15th October.

Prest.—
The Chief Justice.—
Justices Pyke & Rolland.—

No 644
Molsons dal
v
Gilmour

Action for freight & towing raft
Mr Buchanan for Pltff— The only enquiry in this case whether pltffs are intitled to recover the sum of £30 for towing a raft to Three Rivers.—

No 702
Ritchie dal
v
Molsons dal

On action to recover the value of a raft of timber which Defndts undertook to tow down to Quebec from Montreal, & for the negligence of the Defndts in this respect—

Mr Day for Pltffs— when Steam boat came to Sorel threw the raft adrift, & had diverged from the proper Channel— when taken in tow again, the boat grounded & remained so for 2 days— there was then no licensed pilot on board the boat, at least not such a regular pilot as was requisite & as usual— The boat again cast the raft adrift in the Lake, and again took the raft in tow & again got aground— after an hour & half again proceeded on the voyage during the night and until the came to a place called Pointe au Sable in the Lake which is a place much exposed to wind & weather

and

and in the course of the night a strong easterly wind arising up, the raft was much distressed, and began to break up – still the Capt. refused to proceed on the night-time altho' thereto required by Delorier, the plff's foreman – about 2 hours after day break the Capt. proceeded wt the raft which by this time was nearly all broken up, & was stopped near Three Rivers, when it became necessary to make it up anew, and thereupon the boat there left it – The timber lost by the breaking up of the raft was at least £400 – value – The expense arising from delay and remaking it, & keeping it thro' the winter amounts to a large sum in damages –

Mr Buchanan for Defendt – The question here whether there has been any negligence on the part of the Defendts to render them responsible – The wits of the plffs all say, they are not conversant with the navigation of the St L. as regards Steamboats & Ships they can only speak as to rafts – The opinion of such men of no value to Capt. of Steamboat – It is the constant practice when boat comes near land & 3 Rivers to let the raft go loose – this was done here – on the night the boat got aground – after 2 days set out again – The Steamboat did not take a brig in tow on the Lake – The Steamboat anchored at point aux Sable near mouth of River Nicholet – here a strong easterly wind arose – and it was that prudent for the raft to remain there until the wind ceased – but even here the storm had the effect of scattering some of the timber That night the raft was carried near the beach of 3 Rivers where it was found the raft could not be safely carried

any

any further – & then the Steam boat left it & proceeded on her voyage to Quebec –

Ryan's testimony of Le Marian, Wm Pipp, says he delivered 7 or 8 cribs of the timber to the Pipps at Quebec out of 9 of which the raft consisted. – It is dangerous to attempt transport of a raft after the wind in the Lake. –

There was a licenced pilot on board the boat, and his opinion was that it was necessary to anchor at Pte aux Sable. –

The traverse of raft was made of soft wood & not sufficient & the safest place in case of a storm was the Pte aux Sable –

The facts of the Case being on Issue of the Defendt 2 Hall's Pract. 108 –

4 Kw. 9. Ct. Dig & De Fost Comm. Thereon. /

The excessive liability in England does hold here, nor in any other where the Civil law principles obtain – by English Law the Carrier is an Insurer – Story. p. 299 –

Bell's Comm. 466. 469. 1st Vol. inevitable accident will excuse the Carrier under the Civil law, but not in England – Therefore the French is a legal excuse. Vide 4 Kw. 9. Ct. Dig. 470. Story 299 – book. – Story. 298 –

N. Denof. Cas Forfeit – p. 252. – Repts re Cas Forfeit. – 2 Boulay Paty. p. 35. 6. 7.

Mr Day in reply – The absence of a pilot – the delay appearing in consequence of want of skill – this when compared with other rafts towed to Quebec by the Hercules – The evidence of Delaurier is confirmed by that given by other witnesses, all of whom shew the want of skill &c. in the Capt. of the Steam boat. Security as well as expedition are inducements for hiring a Steam boat to tow rafts – the want of skill & attraction therefore are material to be considered in the conduct of rafts thus towed, as the damage arising therefrom must attach

The pltffs admit that Defendrs are not liable for vis major, a Cas fortuit. — but they must shew all necessary care & diligence to guard ag.st this vis major, such as ordinary & prudent & foresight would require — Story — p. 25 — & Pardessus Droit, Com. Tom. 2 Nr. 228. —

No 1990

Ritchie & al
vs
Molsoon's al

action to recover value of certain quantity of pig iron — 100 tons shipped, & a quantity not deliv.d —

Mr Day for Pltff — when iron was weighed, there were 92 Tons 18 Cwt = £46. 16. 6 — deficiency 7 Tons 4 Cwt

Mr Buchanan for Defdt — The bill of lading on wch the action is signed by one Welsh in name of — Js Savage — this is not the right bill of lading, as Welsh had no authority to sign such bill of lading for Savage — The true bill of lading has been produced signed by Savage himself — a quantity of pig iron came for Pltff from England in Ship. Duchess, & Savage requested to take pig iron from on board the Duchess, he did so, and after having rec.d the pig iron & other goods from on board the Duchess, Savage gave the bill of lading or rather receipt now produced, annexed to the Com. Reg. what was so rec.d was deliv.d at Montreal —

It is proved never to weigh iron taken on board in the Stream, and it is never usual to give bills of lading for specific weight or quantity unless when an actual weighing & measurement have been made —

Laws 316. 17.

When the pig iron was landed, it was immediately carted away — & it was not till near 2 months after that the Pltff complained of ~~want~~ deficiency of the Iron —

The

The bill of lading a receipt given by Savage is the only true Contract — & the words unknown exonerate Defts — 3 Jarmit. 303 — value of goods contents unknown — Poth. N° 17. Charte fr partie — Abbt. 633. 4. 1. Valin — 637 — 1. Bell. 544. — & Poth. Ch^r partie N° 37 — as to the signature of bills of lading — refers to Paridessus. N° 729. —

2 a 3 months after delivery. Writs for Defts bill for 9£. 16

Mr Day in reply — as to the authority of Welsh to sign the bill of lading — there appear that he signed other bills of lading as well as this one, & this authority appears to have been given to other Clerks of Defts as well as Welsh — There is besides posterior evidence to shew that Welsh had express authority for signing such bills of lading. —

That there is nothing contradicting in the two bills of lading — the only question is the quantity — The Defendts cannot explain away this bill of lading by Verbal Evidence — Starkie Ev. p. 1035. to shew how far verbal testimony can be admitted in explanation of terms in writing —

Objects to the testimony of Shaw & Welsh as parties interested and giving an opinion on law as well as stating facts —

The Iron was weighed on the Wharf immediately on delivery —

Refers to a protest made at instance of Defts of the Writs by which Defts acknowledge the receipt of 100 Tons Iron

Abbot on Shipg. as to words Contents unknown — p. 216 —

N° 2645

Gilmour v Molson & al

action for £500 — value of certain quantity of Iron lost on board Steamboat —

Day for Plff — Steam boat advertised to leave the

port

port of Montreal on 15. April 1831 — The boat proceeded as far as Carouge, but perceiving the bridge of ice there to return 3 or 4 leagues up the river & there anchored — in the course of the night a quantity of ice was carried up by the tide & by reflux came down on the Steam boat and destroyed her and her contents —

This boat left the port of Montreal at same time with the Lady of the Lake & marched on together — but Lady of Lake did not approach the bridge of ice at Caprouge, but anchored upwards of a mile from it on a safer place, whereas the Waterloo anchored in the main channel where it was exposed to the strength & effect of the tide & floating ice —

The want of care and prudence here — are 1 The early period of quitting the port of Montreal for Quebec as 15th April — This required a proportionate degree of care in the Master of the boat — and this compared with the conduct of the Master of the Lady of the Lake, shews the want of care — The laying in the stream, was imprudent —

Mr Buchanan for Defendt — There is nothing in this case to charge the Defendts with any negligence. In the bill of lading, the perils of navigation are excepted and the means of † 2 Holt 113. & 117. Story. 332. 3. Kents Com. 171 — 1 Bell. 559 — The Defendts bound only for levis Culpa, fanta lizera only — Laws. 356. — & Story. 329 — Jones on bailm 141 — Poth. Ch. parte No 3. — 1 Boulay Paty. p. 378 & p. 404 — 2. Thomis. 313 — as to Culpa levis — In 3 Kent 368 — levissima Culpa will not —

† which is explained in cases referred to.

but this is wholly exploded, and all the distinctions of
Levis Culpa removed — 1. Bell's Com. p. 587. 555. Where
pilots on board, the Capt — is exonerated from responsibility
here there were 3 pilots on board — Holding a Consultation
on board 1 Roby 384 — with in certain cases of danger absolves
the Capt from responsibility. 3 Esp. Rep. p. 127. — to
shew extent of responsibility — Inevitable accidents are
not binding. 1 Sanders on pleads 334 — actions ag Carriers for
loss of goods — 1 Bell. 559. Story. 318 — No 35. Chit. Pl. Parties
Mr. Dewey. Cas. part. 254 — 12 Rep. Co. Rep. 368 — 1 Valin.
p 663 — 2 Pardessus. 564 — 2d. Vol. 149. 154 — Story. 335. 6 —

Objects to the testimony of Manna Buck as an incompetent
witness from the interest he expresses in the event of the suit.

Mr Day in reply — The Defendts were bound to know
that the way was open to the port of their destination before
they notified their undertaking to convey goods from Montreal
to Quebec — there was not even any sufficient enquiry made
in this respect —

When the Boat came to see their danger in approaching
this barrier of ice, they ought immediately to have remained
at a distance evidently beyond all danger, such as going to
the port of Three Rivers — The danger here was foreseen, and
ought to have been provided against — but was not. — The
anchoring near the bridge of ice in the night time, when they
could not see the accumulation of ice about them was also
imprudent —

Cites. Story. p. 26. No 37 — when bailment is profitable for
both parties, the depr bound for ordinary neglect — Pardessus
p. 411 — 10 Johnson's Rep. p. 107. — Story. 333 —
Hart & Jones — Stuart Rep. p. 59. —

2 Starkie 744. 3d Vol. 1729 — as to Manna Buck's evidence
being admissible

Domat 181 —

384

Pardessus p 411.

№ 748.

Brunette
vs.
Legault
et al. Delaunay

On report of arbitrators –

Mr Lafontaine for Defendt submits to award as just. –

№ 987.

Archambault
& Devos
& Jolicoeur
& DeBlenry Apptes

On Lew. on ~~moots of~~ oppos.ns & on rule for sale et folle enchere of oppost.

Mr Cherrier for Pltff. The adjudicataire is not allowed to set aside his adjudication but demand a dimunition, Hericourt p. 302. № 12. –

The opposition does not contain sufficient conclusions which can adjudge to Opposts his demand – That the opposts has not filed an Appost afin de conserver, for the very damages which he says ought to exonerate him from taking a title from the Sheriff. –

Mr Gosselin for the opposts

№ 1388

Richd Hayes
vs.
Smith, Curr

action for wages – as a Clerk

Mr Doniol for Pltff – has proved Pltffs services & the quantum of wages –

Mr Terroux for Defendt – the evidence in Cause will not support the demand – Pltff has been paid all he was entitled to – from July 1833 to March 1834 – the parties were partners – No act of Curabelle filed & action cannot be maintained. –

No 1863
Coyteux
vs
Brunet

On law
Mr Turgeon for Defendr has demurred to the action as the Contract set out in the declaration was made by a Notary who was a relation of the party —
Mr Lafontaine for Plff the exceptions are informal and cannot be received —

No 2165.
Fuchs
vs
André

On law
Exception dismissed

No 2301.
Gibb
vs
Johnson

On law
Mr Badgley for Plff — The Defendr has pleaded only to a part of the demand — the plea is imperfect —

No 707
Perrier
vs
Snaith, &c

action for 3 years rent —
Mr Terroux for Defendr admits debt, but contends Plff not entitled to proceed by claim —

Robitaille
vs
Coyteux

action en interruption de prescription —
Mr Lafontaine, Plff has not made proof of his allegations. —

№2273.
Fleming
vs
Ellis

On report of Arbitrators —
Buchanan for Defdt — Arbitr proceeded without any notice to the parties.

№440
Ex parte on Petition of Dr Moreau & Moffat — oppt

Mr Scott for Petr — states that the sale to the Petr was complete before the Mortgage granted to the Appellt — The plffs title was completed by the drawing the lot and sort, and the obligation of Hartley & wife was passed afterwards —
7 Pothier. p. 55. № 55. p. 527. № 448 —

№43
Taylor for Appellt — by the proposals held out by Hartley & wife, there is no actual sale, but a promise to sell such lots as shall be drawn by the parties — There was no tradition of the property & continued to belong to Messrs Hartley until the deed of sale was completed — The deed of sale is general and does not refer to any preceding agreement of sale — The confirmation of this deed is registered which is long subsequent to the Appellt Mortgage —
Civ. Inst. Instit. — Vente. 318. 19. 20. 21. 22. 26. 27 also 484. 5. & 493 — Denizt. vo Vente. № 49 — Troplong. Ch. 1. № 18 — Where a Notarial act is to be made to complete the Contract, the sale not complete till this act is passed — Dr. № 118 to № 133 —

Friday 16th October.—

Prest
The Chief Justice.—
Justices Pyke & Rolland

No 1399
Labadie
&
Albert
&
Garants—

Bleury for Pltff moves for Judgt — ex parte —
Mr Pelletier for Defendr & pltff en garantie — contends
that Pltffs demand should be diminished to 1/62
of the amt demanded —

No 292
Coyteux
&
Robitaille
&
Trésn. Cur'
&
Robitaille
Apt

Mr Lafontaine for Pltff —
action hypoth. for payt of an obligt granted
by the Appt — The appt now sets up
a right of compensation of the Pltffs debt
which is anterior to the obligation in question
and which Pltff never owed — or at least not personally
but only hypothecarily — The debt of pltff is clear &
certain & there can be no compensation for a debt, not
yet ascertained — The appt cannot under an act of
delegation made in the acte d'échange in 1821. by Provost &
Appt claim to be the personal creditor of Pltff, but have only
a hypothecary right

Objects to the sufficiency of the conclusions — as they do
not demand to adjudge upon the compensation set up, but
merely that the action be dismissed. —

Mr Bleury for Oppost – On shewing that Pltff's debt is prescribed the demand must cease – and although the oppost has not opposed his right of the Pltff before Judt is not precluded from doing so by the present opposition – 7. Toller p. 470. – No 391 – at all events the Court will suspend the proceedings in this cause until the claim of the Oppost be ascertained

No 417.
Leblanc & Gatien & Gatien. opt

Bleury for Pltff demands Judt for a sum £16. 14. 1. –

Mr Perrault for Oppost demands the nullity of the saisie – That Brazeau sued out a Saisie arret in hands of Oppost – while Pltff pursued his action of him, & obt. Judt – in which no notice was taken of the saisie-arret – & 621. 1st Bijaux – That there is no commandement de payer – That Pltff with a knowledge of this saisie-arret & had been served on him, has improperly sued out his opposition – demands the nullity of the saisie –

Bleury for Pltff – The pltff could not ascertain what was the amount of the monies attached in the hands of the Oppost –

Loranger & Vaillant & Bureau & Vaillant & Sylvestre, Tutr opposts –

On opposition afin d'annuller of Sylvestre, Tutr – on Loan –

Mr Lafontaine for Oppost – in Case of Loranger & Vaillant the Oppost is no party to the Minors – In the other cases the Minors are condemned –

The

The four Judgt Creditors have united to seize the land, which Oppot— considers to be illegal, as being for too large a sum— That here there was no commandement de payer before the seizure, it is a formality qt— cannot be dispensed with— Nor is it said, that the bailiff made any seizure of the property, but merely a description taken of the real estate— That a separate demand should have been made for each separate debt—

Poth. Proc. Civ. Pijeau—

Mr Rettier— There is no union of the different Demands there are several executions upon several Judgts— on which the Sheriff has proceeded to execute at the same time—

There is an enough to supply the defect of a commandement de payer in the P. Verbal of the bailiff—

No 716.

Goodsell & Torrance

Action for wages as Capt of Steam boat

Mr Smith for Defendt the Defdt allows the Pltff for the proportion of time he served as Capt— The only question whether the right proportion is allowed The ~~other~~ allowance of 3 glasses a day of liquor, is allowed, but not the other charges— The debt due to Pltff here is below the competence of this Court & the action ought therefore be dismissed—

Mr Bleury for Pltff— The Pltff was contd as Capt. of the Boat by agreemt w Defdt— when he purchased the boat— The use of Pltff's boat may be proved by supplying oath of Pltff

Saturday 17th October. –

Prest.
The Chief Justice.
Mr Justice Pyke.
Mr Justice Rolland.

No. 31

Cotterell
x
Finlay. –
&
Brenan opt

On opposition of Brenan for his provisoire
for housekeeping –

Mr Pebrault for Oppt – The droit de Suite
is exercised only after the expiration of the lease – Here
there is no proof of any lease between Pltff & Deft
2 Fer. Gr. Comre. art 171. – p. 1261. 2. 3 – it is only where
the goods effects are carried off furtivement & à une
heure indue. – Lemaitre on 171. tit. 8. p. 213 –
Bac. ch. 21. No 279 – 1 Duplessis. p. 619 –

Claims the Stove as the principal moveable
seized.. as his property. –

Mr Rossiter for Pltff – as to the Stove, Pltff says
no claim, as it was never in his house – Pltff is
entitled to follow up his proviso

No 39.

Lepailleur Derissy
Shaw-Armour
&
Quesnel – opt

On opposition afin de charge –

Mr Peltier for Pltff consents to the property
being sold, on the Oppt. giving Security

№ 78.
Fiscian
Chartier —

action of amount — ments —

Mr Charrier for Defendt — the action cannot be maintained, as the act under which Defendt claims the effect in question has been ratified & confirmed by Plffs. That in any case the Plffs ought to be held to restore what they have received under the said act — Donations de biens presens ou venir are valid as to what the donor had at the time of the donation —

poss. p. 468 Don.

Mr Lafontaine for plff — the authority does not apply — the pretended ratification of the deed in question cannot affect the right of plff — That this donation would not deprive the testatrix to dispose of the money in question as she pleased — renonc: to a future succession must be express. Poth. Succ: p. 34. tom. 6 — p. 576. Lebrun. Succ: & p. 521. — In the ratifications here there is no mention made of these renunciations nor any confirmation of them —

Poth. Succ.

Mr Charrier in reply —

№ 256 —
Opt. Marançon

Ratification can — draw Int

№ 2150
Kottmyer
vs
Bourbillier

on law
action on Int: in the Inferior Court —
Guy for Defendt pleads that by-law Plff cannot maintain an action on such Int before this Court, even when a Ca. has been issued on the affidavit of Plff — The Jurisdiction of the 2 Courts is limited — the words en litige in the Stat. shews there must be a claim & demand in dispute between the parties about

the

Nº 1208.
Pillet
vs
Le Guay
Jos^te Guay Intervs

Entd here by mistake, by turning over 2 leaves
Thes 2 causes here follows were heard on 16th

On Contr — on the Intervention —

Mr Charrier for Intervg party moves to reject & discharge the Inscription as irregular, before the contest was raised or issue raised on the Intervention, to which the Plff has filed an exception — and according to the course of practice there must be an answer to this exception. —

Nº 2586.
Snedden
vs
Arcan —
Cauthers —
Intervs

On Intervention — Merits. —

Mr Rossiter for the Intervening party — The articles seized belonged to the Community that exists between the wife of Arcan & her former husband Brown —

Saturday 17th Oct.

Rottmyer
vs
Bouthillier

the sum limited for the jurisdiction of the Court — The party here had a Judt and might have proceeded to execute it, without renewing his claim for another Judgt before this Court. — cites case of McNeden & Lawson 1833 — action dismissed —

Mr Peltier for Plff — the new circumstance of the Defendt being about to leave the province, gives the Creditor a right to arrest him —

Rasco
vs
Prieg

action for board & lodging —

Mr Sexton for Defendt — The Defendt was a boarder in the Plffs hotel, and had his effects there — the hotel was

consumed

consumed by fire, by the negligence of the pltff & his people — The articles were entrusted to the Pltff to be washed, and the washing of them is charged in his acct — Poth. Louage. № 193. 4 — 1rd Domat Louage — Sec. 8 — tit. 16. Sec. 1. № 3. p. 131 — Instit. Jur. by Corr. p. 190-191. Jones on bailm. Smithers & Carter nearly in similar situations —

№ 972.
Guerin dal
v
Gillis —

Action for goods sold —
Driscoll for Pltff — Defendt has pleaded a settlement of acct — Pltff has replied, the sum here demanded was not included in the acct so settled — the Defendt has also alledged the payt of the money — Wits have been examined to this fact —
M. C. Breneau for Defdt — The action is founded plea no assumpt — has obligation comme de tous — new demand set up — for flour — a replement de compte proved — moves to reject the testimony of Johnson Thompson as interested —

№ 2670
Bowman
v
Janet Martin
&
Carswell opp.

Opposition of Carswell —
Rule for hear'g dism'd —

№ 707
Ferrier
Jacques
v
Rieutord

Ex delicto —

№ 2486.

Ex parte Corporation of Montreal } Lepröhon

On Rule granted at the instance of the Corporation of the City of Montreal aff Mr Lepröhon to shew cause why he should not deliver the possession of certain property & books he held & possessed as Clerk of the Market that they may be delivd to the person named & appointed by the said Corporation as Clerk of the Market. & that a Mandamus should issue for this purpose —

Mr Day for Corpn — The Defdt having refused to accept an appointment of Clerk of the Market from the Corpn as he held a Commission as such from the Governor of the Province, and refused to give up any of the things in his possn & therefore the present course adopted

This course the regular one, Petersdorff. Vo Mandamus 458 — King. v Ingram. — Com. Dig. tit. Vo letter A — Angell & Ames. p. 441 — on Corporations — /

The Corpn — as well by express enactment, as by right interpretation of the Stat. entitled to this appointment — refers to Stat. 1. Wm 4. Ch. 54 — 3. Sec. the powers conferred on the Common Council to elect all necessary officers — 45 Sec have same power & authority as Justices of Peace had, and a general power over all things regarding the police of the City and keeping it clean lighted &c — 6 Sec. They are vested with all the ordinary debts — By 12 Sec. it is the duty of the Mayor to see rules & regulations put in force & he is to superintend all officers to

See

see they do their duty —

The 3d Sec. gives the power to elect all necessary Offices the language is general & may be called vague, but it is evident it conveys the power here in question of appointing a Clerk of the Market —

The duties of this Officer here & in Great B. are very different — there he was an officer of great consideration, refers to Stat. Rich. 2d — The only important duty possessed by the Clerk of the Market here is taken away by the Stat. 39. Geo. 3. ch. 7 — in regard of the power of stamping weights & measures — This is the first act in gt. the duties of the Clerks of the Markets are adverted to —

39. Geo. 3. ch. 7. sec. 7.

57 Geo. 3. ch. 7. sec. 14 — Is the next act that refers to Clerks of the Market — These two Stat. contain all that is to be found regulating the duties of the Clerks of the market —

By rules of Police passed in Jan. 1821 — ch. 2. certain duties are imposed on the Clerk of the market —

These duties are all purely ministerial to be performed under the direction & control of the Corporation, and within the limits of their jurisdiction — The Corporation act in their right, and not under a delegated authority such as held by the Justices of the Peace — This Clerk of the market, so situated in regard of his duties towards & under the control of the Corporation, must be considered as the Servant and Officer of the Corporation — & then under the 3d Sec. of the Stat. —

1 Barn & Ald. p. 67 — as to general import of the act of Incorporation, it gives the power over all the markets, & if we may suppose that the right of patronage as to the Clerk

of

of the ~~Crown~~ market — and the Crown should refuse to appoint such a Clerk — the enjoyment of this part of the franchise in regulating the markets would thereby be prevented —

The Corporation as Lords Owners of the Market are entitled to this appointment — This right is an incident to the ownership of Markets — By the Stat of Corp. they are vested with the revenue of the market and the absolute property of the markets — For the case cited from 13 Rep. 2 Ald. Rep. circumstances carried with them the right of appointment to this office — same thing is also to be found 1 Kyd. on Corp. p. 108. —

1. Kyd 108

Stat. 16. Chas. 1. ch. 19. sec. 3. The clerks of markets of different appointments & authorities shall exercise their duties within the limits of the powers of the Bodies — appointing them —

Stat. 22 & 23. Chs. ch. ~~28~~ 8. sec. 4 —

4. Bl. 275

That the right to appoint Clerks of a Market was not incident to the Crown, unless where it was the proprietor of the place, and the Crown never could appoint a Clerk of the market in any place owned by any other Body or individual — The Coronam was not originally an appointment of the Crown — and we find the right of appointment of Clerk of Market is in a Bishop. 4. Bl. Com. 275 —

p 894 Petersdorff. v. Clerk of the Market — where it is held that the mis-user of a franchise in a Corpn in matters over which they have power, is a forfeiture of their right, & can only be such in non-appointment of Clk of Market — Com. Dig. tit. Market F. No. 1

also Letter (F.) No 2. Tothbroth — Bac. Abr. tit. Fairs & Markets. Letter (C) — Refers to one Patteson Rep. 82 cited by Petersdorff, q.v. he does not produce —

Mr Mondelet for Defendt — The writ of Mandamus is not granted to supersede, but to supply the defect of any other remedy — The Corporation might have had an action on prevendation — Com. Dig. tit. Mandamus — it will not lie to establish a doubtful right — Hawk. Cr. Pr. ch. 3. p. 21. & 22 — & p. 53. 54. — Impey on Mandamus p. 87. 8. & 91. 93. — no Mandamus where an action will lie or where the right of the party is not clear — p. 96. 97. —

The office of Clk of Market is here held by Leprohon & Marchand jointly & severally, & yet Marchand is no party to this proceeding — Impey. 115 — Petersdorff. p. 353 — Chitty on Prerog. p. ~~116~~ 338 The gen. warrant is the usual course of trying questions arising by the prerogative writ of Mandamus — Impey p. 162 —

It is the Kings Prerog. to appoint all Officers whatever — by Stat. 49. Geo. ch. 7. Sec. 8. & 14 — Clerks of market are here recognized when they could be appointed only by the Crown — & as to the hay market same thing holds —

The act of Incorp. by the Sec. 24. the Kings rights are expressly reserved — and among them must be considered the right of upholding the appointments already made — Where there been no such officer in existence, the Corporation might have perhaps appointed one — The clause 5. restricts the powers of the Corporation to those held by the Justices — & did not extend further — at least they must shew they held other powers besides those held by the Justices —

1 Com. Dig. tit Officer letter D — 2d tit Prerogative (D) Chitty on Prerog. p. 186 — The Justices possessed the same rights as Corporation, they are mere administrators

1—

of the City, but not the proprietors of the objects put under their directions — The Corporation consists of all the Citizens, and not the Individuals who are appointed to administer, on the same manner as the Justices administer —

Mr Pelletier in reply — The rule here is not that the Clerk shall deliver up the articles in question to the Corporation, but to another Clerk, which shews that it is a matter of contest between the two Clerks —

Mr Pelletier in reply — The rule here is obtained in the name of the Corporation, & being in possession of the market they claim that the deliveries be made to their officer, which is the same as to themselves —

It is not necessary that Mr Marchand should be a party to the rule as he is not possessed of any thing contemplated by the rule —

The Corporation here is a moral being holding all the rights touching the regulations for the public benefit as a Communauté, & as such are proprietors of all that belongs to the town — This power is greater than that held by the Magistrates, who were merely administrators but had no property in the thing —

The King has sanctioned the law establishing the Corporation, has thereby sanctioned all the necessary authorities vested in that Body necessary for the management of the things committed to their charge — Before this the King was considered as holder whatever belonged to the public and as such appointed all necessary officers to take charge of public interest — but the Corporation takes the place, and holds all those rights thus exercised for the public benefit as far as regards the management —

7—

of the public property — This holds particularly in regard of Markets, as a matter of daily regulation The inconsistency of the right of nomination in the Crown to hold a situation under the control & direction of the Corporation, is too apparent to be allowed as a principle of public administration — it would give rise to contests and impediments in the right government of the public rights — If the corporation can appoint they can change and displace those that are in place and appoint others. —

Monday 19th October

Prest
The Chief Justice.
Justices Pyke & Rolland

No 2489
Wm Warwick v Guy Warwick & Lon Fortune opt — Interlocutory directing improvements on the lot of land in question to be estimated & to be allowed & deducted in preference to the claim of Appt for Dower — Dissts Mr Justice Rolland —

No 781.
Hobart v Phonyx Assurance Office — Judgt for Pltff for £

No 804.
Jos: Hobart v Phonyx Ass Co — Judgt for Pltff for £12.10 —

No 403.
Farquhar v Begley & Co — Action dismissed —

No 168.
Reynells & Co v Lussier — Judgt for Pltff. for wood attached —

No 1778
Marie E. Roi Augr v Gravelle & Duclos Intervs — Judgt maintg Intervention & ordering Pltff to give the security required —

№ 1075 Barsalou v. Beaudry, Cur. Peddle mis en Cause	Action dismissed
№ 951. Rathwell v. Kurczyn	action dismissed
№ 317 Shedden v. McPherson & C.	Judgt for Plff
№ 2534 McDonald v. Scott	Judgt for Plff
№ 1316 Major v. Ermatinger	Judgt for Plff
№ 987 Archambault Dvos de Soliciteur v. Dit Bleury Oppt	Opposition dismissed and Rule for the folle enchere absolute —
№ 966 Stewart et al v. Bell	Interlocr ordering Plffs to give security

Owston v Cuvillier	Rule for new trial discharged
Lussier v Russel Obe	Judgt for Pltff
Duff v Crombie	Judgt for Pltff
Cotterell v Gormley	Judgt for Pltff
McKorkil v Bowker	Intutor setting aside the proceedings
Craghwell v Evans	Judgt for Pltff
Boston v Gabourian & Opp	Judgt maintg the Apposition
Coyteux v Robitaille & Tison, Tut & Robitaille opp	Apposition dismissed

Tuesday 20th October 1835.

Pres.
The Chief Justice.—
Justices Pyke & Rolland

De Forest & Co. vs Bostwick & Co. — Judgt for Pltffs.—

Wilkie vs Gael.— — Judgt for Pltff.—

Leblanc & Gagnier & Gatien Oppts — Opposition maintained and Saisie-exon set aside.—

Cotterell & Finlay & Uts & Brenan oppt — Opposition dismissed, excpt as to the Stone of which main levée is granted to the oppt.—



JUILLET.

Le ☉ entre au ♌ le 23 à 11h 3

☽ le 3 à 9h 47m Matin. | ● le 17 à 10
☉ le 10 à 1h 43m Matin. | ☾ le 25 à mi



AOUT.

Le ☉ entre à la ♍ le 23 à 5h

☽ le 1er à 56m Soir. | ● le 16
☉ le 8 10h 45m Matin. | ☾ le 23
☽ le 30 à 7h 59m S



SEPTEMBRE

Le ☉ entre à la ♎ le 23 à 2h 23m s

☉ le 6 à 9h 57m Soir. | ☾ le 14 à 10h 5
● le 22 à 9h 32m Matin. | ☽ le 29 à 2h 14

J. M.	Cou. H. M.	MOIS	Cl.	Sems.	FETES.
17	7 43	1	b	Mercre	Oct. de s. Jean Baptiste,
17	7 43	2	b	Jeudi	Visitation de la B. V. †
17	7 43	3	b	Vendre	s. Basil, év. doct.(14 Juin)
18	7 42	4	b	Samedi	s. Guillaume,abbé,(25 Juin)
18	7 42	5	r	DIM.	4
18	7 42	6	r	Lundi	Octave des Apôtres,
19	7 41	7	b†	Mardi	ste. Marguerite, r. (10 Juir
19	7 41	8	b†	Mercre	ste. Elizabeth, reine,
20	7 40	9	b†	Jeudi	s. Léon, pape, (28 Juin,)
21	7 39	10	r†	Vendre	VII Frères Martyrs,
22	7 38	11	b	Samed	De la Ste. Vierge,
23	7 37	12	b	DIM.	5 DEDICACE,
23	7 37	13	r†	Lundi	s. Anaclet, *Incipit.*
24	7 36	14	b	Mardi	s. Bonaventure, év. doct.
25	7 35	15	b†	Mercre	s. Henri II. empereur,
25	7 35	16	b	Jeudi	N. D. du Mont Carmel,
26	7 34	17	b†	Vendre	s Alexis,
27	7 33	18	b	Samedi	sCamille de Lellis, conf.
28	7 32	19	r	DIM.	6Oct. Dédicace,sol. s. Jac.
29	7 31	20	b	Lundi	s. Jérôme Emilien,
30	7 30	21	b	Mardi	s. Jean Gualbert, ab. (12)
31	7 29	22	b	Mercre	ste. Madeleine,
32	7 28	23	r	Jeudi	s. Appolinaire, év.
33	7 27	24	b	Vendre	s.Vincent dePaule,(19)MV
34	7 26	25	r	Samedi	s. Jacques, apôtre,
35	7 25	26	b	DIM.	7 ste. Anne, mère B. V.
36	7 24	27	r†	Lundi	s. Pantaléon, *Incip.Or.Fid.*
37	7 23	28	r†	Mardi	s. Nazaire, &c. marts.
38	7 22	29	b†	Mercre	ste. Marthe, Vierge,
39	7 21	30	r†	Jeudi	ss. Abdon et Sennen,
40	7 20	31	b	Vendre	s. Ignace de Loyola,

J. M.	Cou. H. M.	MOIS	Cl.	Sems.	FETES.
41	7 19	1	b	Samedi	s. Pierre aux Liens,
42	7 18	2	vr	DIM.	3. *Dom.* 1 *Aug.*
43	7 17	3	r†	Lundi	Invention de s. Etienne,
44	7 16	4	b	Mardi	s. Dominique,
46	7 14	5	b	Mercre	N. D. des Neiges,
48	7 12	6	b	Jeudi	Transfig. de N. S.
59	7 11	7	b	Vendre	s. Cajétan.
50	7 10	8	r†	Samedi	*Jeûne.* ss.Cyriaque, &c.
52	7 8	9	r	DIM.	9 Sol. s. Laurent, *D.* 2 *A*
53	7 7	10	r	Lundi	s. Laurent, diacre, *Oct.*
55	7 5	11	r†	Mardi	De l'Octave,
56	7 4	12	b	Mercre	ste. Claire, vierge,
57	7 3	13	r†	Jeudi	De l'Octave,
58	7 2	14	vl†	Vendre	De l'Oct. Messe de la V
0	6 0	15	b	Samedi	*Jeûne.* ASSSOMPTIO
1	6 59	16	b	DIM.	Joachim,Off. l'Asom. 3I
2	6 58	17	r	Lundi	Oct. s. Laurent,
4	6 56	18	b	Mardi	s. Hyacinthe, (16,)
5	6 55	19	b†	Mercre	De l'Octave,
6	6 54	20	b	Jeudi	s. Bernard, abbé,
8	6 52	21	b	Vendre	ste. Jeanne de Chantal,
9	6 51	22	b	Samedi	Oct de l'Assomption,
11	6 49	23	r	DIM.	13. s. Phil.de Beniti,Sol
13	6 47	24	r	Lundi	s. Barthelemi ap. [*I*
14	6 46	25	b	Mardi	s. Louis, roi
15	6 45	26	r†	Mercre	s. Zéphyrin, mart. *Or. I*
17	6 43	27	b	Jeudi	s. Joseph de Calasantz,
18	6 42	28	b	Vendre	s. Augustin, év. doct.
20	6 40	29	r	Samedi	Décol. de s. Jean Bapti
22	6 38	30	b	DIM.	14. ste. Rose de Lima, *I*
23	6 37	31	b	Lundi	s. Raymond Nonnat, [*D*

J. M.	Cou. H. M.	MOIS	Cl.	Sems.	FETES.
24	6 36	1	b†	Mardi	s. Gilles, 2 *Or Fid.* M
26	6 34	2	b†	Mercre	s. Etienne, roi,
27	6 33	3	vr†	Jeudi	*Rép. Dim.* 1,
29	6 31	4	vr†	Vendre	
30	6 30	5	b†	Samedi	s. Laurent Justinien,
32	6 28	6	vr	DIM.	15 *Dim.* 2 *de Sept.*
34	6 26	7	vr†	Lundi	*Or Fidelium,*
35	6 25	8	b	Mardi	Nativité de la B. V. M. Oct.
37	6 23	9	b†	Mercre	De l'Octave, M
39	6 21	10	b	Jeudi	s. Nicolas Tolentin, év. M
40	6 20	11	b†	Vendre	De l'Octave,
41	6 19	12	b†	Samedi	De l'Octave, [*Dim.* 3
43	6 17	13	b*	DIM.	16 Nom de Marie, Sol.Nativ.
44	6 16	14	r	Lundi	Exaltation de la ste. Croix, M
46	6 14	15	b	Mardi	Octave de la Nativi é,
48	6 12	16	r†	Mercre	4 *Ts.* ss. Corneille,&c. *Inc.* 2M
49	6 11	17	b	Jeudi	Stigmates s. François, M
51	6 9	18	b	Vendre	4 *Tems.* s. Joseph Cupertino,
53	6 7	19	r	Samedi	4 *Ts.* ss. Janvier,&c. 2M [*D.* 4
54	6 6	20	r	DIM.	17 ss.Eustache,&c,sl.Math. M
56	6 4	21	r	Lundi	s. Mathieu, évang.
58	6 2	22	b	Mardi	s. Thomas de Villeneuve, M
0	6 0	23	r†	Mercre	s. Lin, pape mart,
1	5 59	24	b	Jeudi	N. D. de la Merci,
2	5 58	25	vr†	Vendre	*Rép. Dim.* 4.
4	5 56	26	b†	Samedi	De la Ste. Vierge, M
5	5 54	27	b	DIM.	18 Sol. s. Michel, *Dim.* 5
7	5 53	28	r†	Lundi	s. Vinceslas, mart,
9	5 51	29	b	Mardi	s. Michel, Archange
11	5 49	30	b	Mercre	Jérôme, ptre.



OCTOBRE.

Le ☉ entre au ♎ le 24 à 10h 38

☉ le 6 à Midi 7m | ● le 21 à 7
☽ le 14 à 4h 59m Soir. | ☾ le 28 à 1



NOVEMBRE.

Le ☉ entre au ♐ le 22 à 7h 6m

☉ le 5 à 5h 22m Matin. | ● le 20 à 5h 3
☽ le 13 à 9h 34m Matin. | ☾ le 25 à 10h



DECEMBRE.

Le ☉ entre au ♑ le 22 à 7h 20m

☉ le 5 à Minuit 42m | ● le 19 à 4h 20
☽ le 12 à 11h 5m Soir. | ☾ le 26 à 2h 40

J. M.	Cou. H. M.	MOIS	Cl.	Sems.	FETES.
1	5 48	1	b	Jeudi	s. Rémi, évêque,
2	5 46	2	b	Vendre	ss. Anges Gardiens,
3	5 44	3	r†	Samedi	ss. Come et Damien,(27Se
4	5 43	4	b	DIM.	19 Sol. s. Rosaire, *D.* 1 *Oct.*
5	5 41	5	b	Lundi	s. François d'Assise,(hier)
6	5 39	6	b	Mardi	s. Bruno, abbé, *Pollen*
7	5 38	7	b†	Mercre	s. Marc, pape, *Oratio Fid.*
8	5 36	8	b	Jeudi	ste. Brigite, veuve,
9	5 35	9	r†	Vendre	ss. Denis, &c. martyrs,
10	5 34	10	b†	Samedi	s, François de Borgia,
11	5 32	11	vr	DIM.	20 *Post Pent. et* 2 *Octobris,*
12	5 30	12	vr†	Lundi	Oratio Fidelium,
13	5 29	13	b†	Mardi	s. Edouard III., roi,
14	5 27	14	r	Mercre	s. Calixte, pape, mart.
15	5 25	15	b	Jeudi	ste. Thérèse, vierge,
16	5 24	16	vr	Vendre	
17	5 22	17	b†	Samedi	ste. Hedwidge, veuve.
18	5 21	18	r	DIM.	s. Luc, évang. *Dim.* 3,
19	5 20	19	b	Lundi	s. Pierre d'Alcantara,
20	5 18	20	vr†	Mardi	
21	5 16	21	b†	Mercre	s. Hilarion,
22	5 15	22	vr†	Jeudi	
23	5 13	23	vr†	Vendre	
24	5 11	24	b	Samedi	*Jeûne,* De la Ste. Vierge,
25	5 10	25	b	DIM.	N.D. des Vict. *d.* 4 2M s Sin
26	5 8	26	r†	Lundi	s. Evariste, pape M *Or I*
27	5 7	27	vl†	Mardi	De la Vigile,
28	5 6	28	r	Mercre	ss. Simon et Jude, ap.
29	5 4	29	vr†	Jeudi	*Leçons du* 5 *Dim. Rép.*
30	5 3	30	vr†	Vendre	*Lec. f.* 2 *post. D.* 5 *Rép.*
31	5 2	31	vr†	Samedi	*Jeûne.* Vigile de la Toussa

J. M.	Cou. H. M.	MOIS	Cl.	Sems.	FETES.
1	5 0	1	b	DIM.	TOUSSAINT,
2	4 58	2	noir	Lundi	Trépassés, *Incip. Dim.* 1 *Nov.*
3	4 57	3	b†	Mardi	De l'Octave,
4	4 56	4	b	Mercre	s. Charles Borromée, 2M
5	4 54	5	b†	Jeudi	
6	4 53	6	b†	Vendre	De l'Octave,
7	4 52	7	b†	Samedi	
8	4 50	8	b	DIM.	Oct. Toussaint,Mes.du Pat, M
9	4 49	9	b	Lundi	Dedic. Basiliq. Savv.
10	4 48	10	b	Mardi	s. André Avellin, M
11	4 46	11	b	Mercre	s, Martin, év. M
12	4 45	12	r†	Jeudi	s. Martin, pape,
13	4 44	13	b†	Vendre	s. Didace,
14	4 42	14	b†	Samedi	De la Ste. Vierge, *Orat. Fid.*
15	4 41	15	b	DIM.	ste. Gertrude, vier. *Dim.* 4 M
16	4 40	16	vr†	Lundi	*Rép. Dim.* 4 *Or Fidelium*
17	4 38	17	b	Mardi	s. Grégoire Thaum. ev.
18	4 37	18	b	Mercre	Dédic. Basili. ss. Pierre, &c.
19	4 36	19	b	Jeudi	ste. Elizabeth, ve. [*Jonas*
20	4 35	20	b	Vendre	s.Félix de Val. *Inc. Abdias e*
21	4 34	21	r	Samedi	Présentation de la B. V.
22	4 33	22	r	DIM.	ste. Cécile, vierge, *D.* 5,
23	4 32	23	b	Lundi	s. Clément, pape,
24	4 31	24	r	Mardi	s. Jean de la Croix, *Inc. D.* 5 *e*
25	4 30	25	b	Mercre	ste. Catherine. [*ser.* 2 *et* 3
26	4 30	26	r†	Jeudi	s. Pierre d'Alexandrie,
27	4 29	27	vl†	Vendre	3e *Leçon, Incipit. Sab.*
28	4 27	28	vl	Samedi	*Jeûne* De la Vigile,
29	4 26	29	vl*	DIM.	1 de l'Av. sol. André, *Cés. suf*
30	4 25	30	r	Lundi	s. André, ap. M

J. M.	Cou. H. M.	MOIS	Cl.	Sems.	FETES.
1	4 24	1	vl†	Mardi	
2	4 23	2	r†	Mercre	ste. Bibiane, vierge, M
3	4 23	3	b	Jeudi	s. François Xavier, M
4	4 22	4	b	Vendre	s. Pierre Chrysologue, 2M
5	4 21	5	b†	Samedi	Messe de la Ste. Vierge, M
6	4 21	6	vl*	DIM.	2. Sol. de s. François Xavier.
7	4 20	7	b	Lundi	s. Ambroise, M
8	4 19	8	b	Mardi	CONCEPTION, (*d'oblig.*) M
9	4 19	9	b	Mercre	s. Nicolas, (6) 2M
10	4 18	10	b†	Jeudi	De l'Octave, 2M
11	4 18	11	b†	Vendre	s. Damase, pape, 1M
12	4 18	12	b†	Samedi	De l'Octave, M
13	4 17	13	vl*	DIM.	3. De l'Avent, M
14	4 17	14	r	Lundi	ste. Luce, mart. (hier,) 2M
15	4 17	15	b	Mardi	Octave de la Conception, M
16	4 16	16	r†	Mercre	*Jeûne* 4 *Ts. s.* Eusèbe, m. M
17	4 16	17	vl†	Jeudi	*Ant De Sion, Ad. Mag O Sap Jup*
18	4 16	18	vl†	Vendre	*Jeûne* 4 *T. Ad l et h. Ant C*
19	4 15	19	vl†	Samedi	*Jeûne* 4 *Ts. Ad* L *et* H. *Ant*
20	4 15	20	vl*	DIM.	sol.sThomas, [*Ecce.ven.* M. Vig
21	4 15	21	r	Lundi	s. Thomas,
22	4 15	22	vl†	Mardi	
23	4 15	23	vl†	Mercre	
24	4 15	24	vl	Jeudi	*Jeûne* de la Vigile,
25	4 15	25	b	Vendre	NOEL, (*d'obligation,*) M
26	4 15	26	r	Samedi	S. ETIENNE, 1er mart. } Dév.
27	4 15	27	b	DIM.	S. JEAN, ap. évangél. } 2M
28	4 16	28	vl	Lundi	ss. Innocents, martyrs, 3M
29	4 16	29	r	Mardi	s. Thomas, 4M
30	4 16	30	b	Mercre	Du Dim. dans l'Octave, 4M
31	4 17	31	b	Jeudi	s. Sylvestre, pape. 4M