Kings Bench. Montreal.

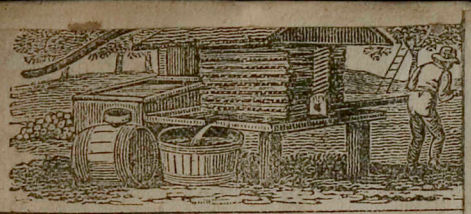
Civil Pleas.

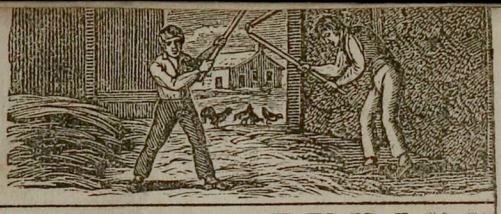
February Term. 1837.

April Term. "

June Term. "

October Term. "







JANVIER

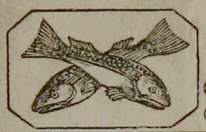


Le ☉ entre au ♒ le 20 à 11h, 5
● le 6 à 6h. 52m. Soir. ◐ le 13
⊙ le 21 à 2h. 51m. Soir. ◑ le 29

MOIS.	JOURS.	Cl.	FETES.	Lev. H.M.
1	DIM.	b	*Vacat.* CIRCONCISION, *d'ob.*	7 43
2	Lundi	r	Octave de *s.* Etienne. 2 M	7 43
3	Mardi	b	Octave de s. Jean. M	7 43
4	Mercre	r	Octave des ss. Innocents.	7 42
5	Jeudi	b	Vig. de l'Epi. 2 *or. s. Thelph.* 3. *D.qui* M	7 42
6	Vendre	b	EPIPHANIE, *d'ob. oct.*	7 42
7	Samedi	b	2d. jour dans l'oct. 2*or.ms.d.q.*3*ec.vl.p.P.*	7 42
8	DIM.	b	*Dom. in. oct et* 1 *post ep.i. E.* 1*ad c.* M	7 42
9	Lundi	b	3e. jour } 2 *or. miss. d. qui.* 3 *eccl. vel*	7 42
10	Mardi	b	4e jour } [*pro Papa*	7 41
11	Mercre	b	5e. jour 2 *or. miss. s. Hygin.* 3 *D qui* M	7 41
12	Jeudi	b	6e. jour *or. Miss. ut.* 9	7 40
13	Vendre	b	Oct. de l'Epiph.	7 40
14	Samedi	b†	s. Hilaire év. 2*or.Mis.s.Fel.* 3*D.q.Suf.*M	7 39
15	DIM.	b	2*d. après l'Epiph.* s NOM DE JESUS 2 M	7 38
16	Lundi	r†	s. Marcel P. et M. *inc. or Miss ut* 7.	7 38
17	Mardi	b	s. Antoine, Abbé.	7 37
18	Mercre	b	Ch. de s. Pierre à Rome. 2 M	7 37
19	Jeudi	r†	s. Canut, m. 2*or.Miss.s. Mrii.* 3 *D.q.* M	7 36
20	Vendre	r	ss. Fabien et Sébastien, mart.	7 36
21	Samedi	b	ste. Agnès, vierge, et mart.	7 35
22	DIM.	vl	SEPTUAGESIME. 2*or.Ms. D q.*3*ec.vl.p.P*	7 34
23	Lundi	b†	s. Raymond de Pennafort, cf. 2 *or.Miss.*	7 34
24	Mardi	r†	s. Thimothé, év. et m. *or. Miss. ut*7.	7 33
25	Mercre	b	Conversion de s. Paul. M	7 32
26	Jeudi	r†	s. Polycarpe, mart. *or. Miss. ut* 7.	7 31
27	Vendre	b	s. Jean Chrysostôme, év. et dr.	7 30
28	Samedi	b	s. Paul, 1 hermite. (du 15) M	7 28
29	DIM.	vl	SEXAGESIME, *or. Miss. ut* 7.	7 27
30	Lundi	r†	ste. Martine, m. et v. *or. Miss. ut* 7.	7 26
31	Mardi	b	s. Pierre, Nolasque, conf.	7 25



FEVRIER



Le ☉ entre aux ♓ le 20 à 2h. 35m
● le 5, à 5h. 14m. Matin. ◐ le 12,
⊙ le 20, à 9h. 29m. Matin. ◑ le 28,

MOIS.	JOURS.	Cl.	FETES.	Lev. H.M.	Cou H.M
1	Mercre	r†	s. Ignace. m. 2*or M.deus qui*3 *ec.vl.p.P*	7 23	5
2	Jeudi	b	PURIFICATION. *Ad compl.* Ave regina.	7 22	5
3	Vendre	b	s. François de Sales, év. (du 29 janv.) M	7 21	5
4	Samedi	b	s. André Corsin, év.	7 19	5
5	DIM.	vl*	QUINQUAGESIME. (*Sol Purific.*)	7 18	5
6	Lundi	r	ste. Agathe, vierge et mart. (hier) M	7 17	5
7	Mardi	b	s. Romuald, abbé.	7 16	5
8	Mercre	vl	LES CENDRES.	7 15	5
9	Jeudi	b	s. Jean de Matha. conf. (d'hier) 2 M	7 13	5
10	Vendre	b	ste. Scholastique, virege. M	7 12	5
11	Samedi	r†	ss. Vincent, et Anastasie, m. (du 22 janv.)	7 10	5
12	DIM.	vl	I. du Carême. [2 *or Acunctis* 3 *Om.* M	7 8	5
13	Lundi	vl†	2 *or.Miss. Acunctis* 3 *Omnipotens.*	7 6	5
14	Mardi	vl†	2 *or.Miss. s. Valentini*, 3 *Acunctis* M	7 5	5
15	Mercre	vl†	*Jeûnes des* 4 *Temps*, 2 *or.Miss. ss. Faus-*	7 4	5
16	Jeudi	vl†	*or Miss. ut* 10 [*teni*, 3 *Acunctis* M	7 2	5
17	Vendre	vl†	*Jeûnes des* 4 *Temps, or. Miss. ut* 13	7 0	5
18	Samedi	vl†	*Jeûne des* 4 *Temps*, 2 *ov. Miss s.Siméon*,	6 59	5
19	DIM.	vl	2. du carême, *or.Miss. ut* 13 [3 *Acts.* M	6 57	5
20	Lundi	vl†	} *or. Miss ut* 13	6 56	5
21	Mardi	vl†	}	6 54	5
22	Mercre	b	Ch. de s. Pierre à Antioche. 2 M	6 53	5
23	Jeudi	b	s. Pierre Damien, év. et dr. 2 *or. Miss.*	6 51	5
24	Vendre	r	s. Mathias, apôtre. [*de fer.* 3 *de vigil.* M	6 49	5
25	Samedi	vl†	*or Miss. ut* 13	6 47	5
26	DIM.	vl	3. du carême. *or Miss. ut* 13 (*Sol* ST.	6 45	5
27	Lundi	vl†	} *or. Miss. ut* 13 [MATHIAS.	6 43	5
28	Mardi	vl†	}	6 42	5

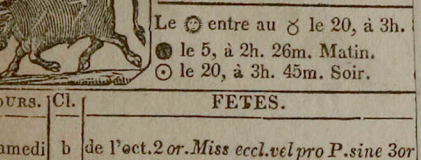


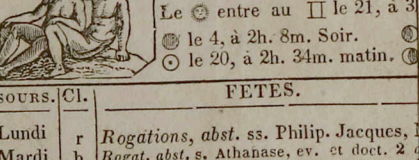
MARS

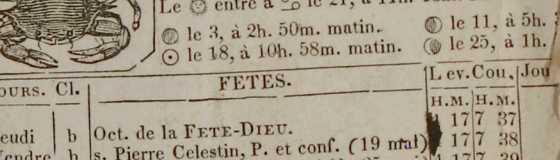


Le ☉ entre au ♈ le 20, à 2
● le 6, à 3h. 35m. Soir. ◐
⊙ le 22, à 2h. 2m. Matin. ◑

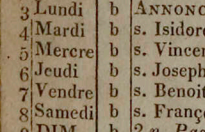
MOIS.	JOURS.	Cl.	FETES.
1	Mercre	vl†	}
2	Jeudi	vl†	} *or Miss. a cunctis* 3 *omnipotens*
3	Vendre	vl†	}
4	Samedi	b†	s. Casimire conf. 2 *or Miss. fer.* 3 *s. Luc.* 2
5	DIM.	vl	4. du carême.
6	Lundi	vl†	*or Miss. ut*
7	Mardi	b	s. Thomas d'Aquin, conf. et dr. 2
8	Mercre	b	s. Jean de Dieu, conf.
9	Jeudi	b	ste. Françoise, veuve.
10	Vendre	r†	ss. 40 Mart. 2 *or Miss. fer.* 3 *Acunc.*
11	Samedi	vl†	*or Miss. ut* 1 les Croix couvertes.
12	DIM.	vl*	DE LA PASSION. *cessant suffr.*
13	Lundi	b	s. Gregoire, p. et dr, (d'hier)
14	Mardi	vl†	}
15	Mercre	vl†	} 2 *or. Miss. eccl. vel. pro p. sine* 3
16	Jeudi	vl†	}
17	Vendre	b	N. D. de pitié.
18	Samedi	b	s. Gabriel, Arch. dupl. maj.
19	DIM.	vl	DES RAMEAUX. (SOL ST. JOSEPH
20	Lundi	vl	}
21	Mardi	vl	} *or. Miss. ut* 14 *ad. laud. et hor.*
22	Mercre	vl	} [*pro*
23	Jeudi	b	JEUDI SAINT.
24	Vendre	noi	VENDREDI SAINT.
25	Samedi	n	SAMEDI SAINT.
26	DIM.	b	PAQUES.
27	Lundi	b	} de Dévotion. } *Post fer.* 3 *semid.*
28	Mardi	b	} } *or. ec. vel p. Pas*
29	Mercre	b	} } 3 *or. de simpl.*
30	Jeudi	b	} de l'Oct. *semid.* } *tant. com. in off*
31	Vendre	b	} } *M. sine* 3 *or*





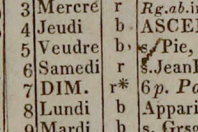


AVRIL



Le ☉ entre au ♉ le 20, à 3h.
● le 5, à 2h. 26m. Matin.
⊙ le 20, à 3h. 45m. Soir.

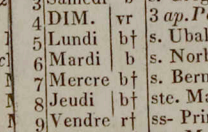
MOIS.	JOURS.	Cl.	FETES.
1	Samedi	b	de l'oct. 2 *or. Miss eccl. vel pro P. sine* 3*or*
2	DIM.	b	1 *p. Pasch.* QUASIMODO.
3	Lundi	b	ANNONCIATION de la ste. Vre. (du 25 mrs)
4	Mardi	b	s. Isidore, év. dr. *lect.* 1 *noct, sapm. credo*
5	Mercre	b	s. Vincent Ferrier, conf. *inc. fer.* 2
6	Jeudi	b	s. Joseph conf. (du 19 mars) *dupl.* 2 *cl.*
7	Vendre	b	s. Benoit, abb. (du 21 mars)
8	Samedi	b	s. François de Paul, conf. (du 2)
9	DIM.	b	2 *p. Pasch.* patron de s. Joseph, 2 cl. M
10	Lundi	b†	s. Patrice, év. et cf. (17 m.) 2*or ec.vel p.P*
11	Mardi	b	s. Léon, p. et dr. O doct. *lect.* 1 *noct.*
12	Mercre	b†	*Miss. de dom. præc.or ui* 10 [*propr. cr.*
13	Jeudi	r†	s. Hermenegilde, m. *or. Miss. ut* 10
14	Vendre	r†	ss. Tiburce &c. m. *or. ut* 10
15	Samedi	b†	de la ste. vierge. 2*or. de spirsto.* 3 *eccl.*
16	DIM.	b	3 *p. Pasch.* ste. Famille, 2 cl M [*vel.pro p.*
17	Lundi	r†	s. Anicet, m. *inc. or. Miss. ut.* 10
18	Mardi	b†	}
19	Mercre	b†	} *or. Miss. ut* 10 *com. de cruce.*
20	Jeudi	b†	} [*tiam cr*
21	Vendre	b	s. Anselme, év. dr. *lect.* 1 *noct. Sapien-*
22	Samedi	r†	ss. Soter et Caius, m. *or. Miss. ut* 10
23	DIM.	b*	4 *p. Pasch. or. Miss. ut* 10
24	Lundi	r	s. Fidèle Sigm. m.
25	Mardi	r	s. Marc, ap. *Abstinence, Process.*
26	Mercre	r†	ss. Clet et Marcellin, m. *or Miss. ut* 10
27	Jeudi	r†	s. George, m. (du 20) *or. Miss. ut* 10
28	Vendre	r†	s. Vital, m. *or. Miss. nt* 10
29	Samedi	r	s. Pierre, m. [ss. Phil. et Jacq.
30	DIM.	b*	5 *p. Pasch.* ste. Catherine de S., M (*sol.*



MAI.

Le ☉ entre au ♊ le 21, à 3
● le 4, à 2h. 8m. Soir. ◐
⊙ le 20, à 3h. 34m. matin. ◑

MOIS.	JOURS.	Cl.	FETES.
1	Lundi	r	*Rogations, abst.* ss. Philip. Jacques,
2	Mardi	b	*Rogat. abst.* s. Athanase, ev. et doct. 2 [Miss. *rogat. cred*
3	Mercre	r	*Rg.ab.*inv.ste.Croix, 2 *or.M.vig.*2 *M.4rog.*2
4	Jeudi	b	ASCENSION, *d'ob. oct*
5	Veudre	b	s. Pie, V pape et conf.
6	Samedi	r	s. Jean Porte Latine, *lt.*1 *noc. de D. infr. oct*
7	DIM.	r*	6 *p. Pasch.* s. Stantslas év. et mt 2
8	Lundi	b	Apparition de s. Michel,
9	Mardi	b	s. Grsgoire de Naz. év. et doct.
10	Mercre	b†	s. Antonin, év. et conf. 2
11	Jeudi	b	Oct. de l'Ascension.
12	Vendre	r†	ss. Nérée &c. m. lt. Int. inc. et com. fer. San.
13	Samedi	r	*Jeûne* Vigile de la Pencôtete. [*propr. p*
14	DIM.	r	PENCOTE, Oct.
15	Lundi	r	} DE DEVOTION } *Post fer.* 3 *semid.*
16	Mardi	r	} *Jeûne* 4 *Temps. oct* } *or. ec. vel pro*
17	Mercre	r	} de l'Oct. } *sine* 3 *or.* 9 *lect.*
18	Jeudi	r	} *Jeûne* 4 *Tems* } *sempl. non dicit*
19	Vendre	r	} } *de co fit com.*
20	Samedi	r	*Jeûne* 4 *Temps salve regina* [*off et M.*
21	DIM.	b	1 *p. Pent.* STE. TRINITE.
22	Lundi	b	ste. Monique, veuve, (du 4)
23	Mardi	b	s. Paschal Baylon, conf. (du 17)
24	Mercre	r	s. Venant, m. (du 18)
25	Jeudi	b	FETE-DIEU, *d'ob. Oct.*
26	Vendre	b	s. Phillippe de Néri. con. 2 M
27	Samedi	b	de l'Oct. 2 *or. Ms. de s. Joan. sine* 9 *lect*
28	DIM.	b	2 *ap. Pent.* Procession. [3 *concede* M
29	Lundi	b	de l'oct. 2 *or. M. concede* 3 *eccl. vel pro P*
30	Mardi	b	de l'oct. 2*or. M. s. Fel.* 3 *concede* .M
31	Mercre	b	de l'oct. 2*or. M. s. Pet.* 3 *concede* M



JUIN.

Le ☉ entre à ♎ le 21, à 11h. 43m. Matin.
● le 3, à 2h. 50m. matin. ◐ le 11, à 5h.
⊙ le 18, à 10h. 58m. matin. ◑ le 25, à 1h.

MOIS.	JOURS.	Cl.	FETES.	Lev. H.M.	Cou. H.M.	Jou
1	Jeudi	b	Oct. de la FETE-DIEU.	4 17	7 37	
2	Vendre	b	s. Pierre Celestin, P. et conf. (19 mai)	4 17	7 38	
3	Samedi	b	s. Gregoire VII P. et conf. (du 25 mai)	4 17	7 39	
4	DIM.	vr	3 *ap. Pent. suffr. inc.* 2 *or. Ms. acunc.* 3	4 16	7 40	
5	Lundi	b†	s. Ubalde év. (16 mai) [*ad libit.*	4 16	7 41	
6	Mardi	b	s. Norbert, év.	4 15	7 41	
7	Mercre	b†	s. Bernardin, conf. (20 mai) *or. Miss. ut* 4	4 14	7 42	
8	Jeudi	b†	ste. Magd. de Pazzi. év. (27 mai) *or. Ms.* 4	4 14	7 42	
9	Vendre	r†	ss- Prime &c. m. 2*or. Ms. Fidel.* 3 *Acunc.*	4 14	7 43	
10	Samedi	b†	ste. Merguerit. reine *or. Miss. ut* 4	4 14	7 44	
11	DIM.	r	4 *ap. Pent.* s. Barnabé, Ap. M	4 13	7 45	
12	Lundi	b	s. Jean de Facond. conf. M	4 13	7 45	
13	Mardi	b	s. Antoine de Padoue, conf.	4 13	7 46	Mai
14	Mercre	b	s. Basile, év. et doct. credo	4 13	7 47	180
15	Jeudi	r†	ss. Vite &c. mart. *or. miss. ut* 4	4 13	7 47	
16	Vendre	b	s. Jean François Regis, conf.	4 12	7 48	W
17	Samedi	b†	de la ste. Vierge, 2*or. Ms. de sp.* 3 *ec.v p P*	4 12	7 48	18
18	DIM.	vr*	5 *ap. Pent.* 2*or. Miss. Mart.* 3 *Acunc.* M	4 12	7 48	1
19	Lundi	b	ste. Julienne, vierge. M	4 12	7 49	la
20	Mardi	r†	s. Sylvère, P. mart. *or. Miss. ut* 4	4 13	7 49	
21	Mercre	b	s. Louis de Gonzague, conf.	4 13	7 49	81
22	Jeudi	b†	s. Paulin, év. *or. Miss. ut* 4	4 13	7 50	
23	Vendre	vl†	Vigile de s. Jean Bap. 2 *or. Ms. concede*	4 13	7 50	
24	Samedi	b	*Jeûne* s. Jean Bapt. oct. [3 *eccl. vel pro P*	4 14	7 50	
25	DIM.	b	6 *ap. Pent.* s. Guillaume, conf. (*Sol.*	4 14	7 50	
26	Lundi	r	ss. Jean et Paul, m. M [s. Jean Bapt.) 2M	4 15	7 50	
27	Mardi	b†	de l'Oct. *or. Miss. ut* 23	4 16	7 50	
28	Mercre	b†	*Jeûne* s. Léon, P. 2*or. Ms. oct.* 3 *vig.* 2M	4 16	7 50	
29	Jeudi	r	SS. PIERRE ET PAUL, aps. *d'ob. oct.*	4 16	7 50	
30	Vendre	r	Commemoraison de s. Paul. 2 M	4 16	7 50	

Prudhomme
Prudhomme & 1. Bouy. 783.

P.M. Com^te — 384

A.

Archambault — & Devos & al' —	7	88	120	241/213
Anderson — & Boudreau —	33	59		
Arnoldi — & Sabourin —	38	108	114	
Archambault & al — Ex parte. Mand^s	46	113	173	
Archambault & Labille & J. S.	56			
Ashton — & Privat —	73			
Adams — & Annesley —	80	113		
Ahern — & Ekemberg —	99			
Adams — & Talon —	122			

B.

Beach — & Dewitt —	2			
Begly & al' — & Boudreau —	7	34	62	
Bruneau — & St. Amour —	13			
Blache — & Kaunby & al'	15	43	62	
Boggval' — & Boyer —	31			
Belair — & Dadegault —	41	102		
Belsland — & Robertson —	53			
Beaupres — & Bedard & ors^t	56			
Bruneau — & Gagnon & ors^t	57	64		
Beaubien — & Rottier & Et cont	57			
Bougret-Dufort & Quesnel —	61			
Bertrand — & Demers —	65			
Bowker — & Scott —	65	67	77	
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Bradford — & Moore —	87			
Belinge — & Moses —	91			
Bachant & ux & Lebeuf —	93	237		
Boon — & Rolland —	100			
Brown — & Reigner & ux	105			
Bleury — & Hart & ors^t	106			
Butler — & McCallum —	106			
Beaubien — & Hart & ors^t	112			
Brown — & Simmonds —	115			
Benning — & Morin & al	117	150	242	
Baldwin — & Clifford & al	127			
Bruneau — & Bender —	149			
Begly — & Frechette & al	151			
Begly — & Cartier & al	152			
Bousquet — & Lebert —	154	180		
Brewster — & Ferrie —	156	242		
Bruneau — & St. Amour & al	165			
Brown — & Quebec Ass^ce Co	199			
Borleau & al' — & Deshautels —	238			

Clarke	Truax & al'	3		
Cazeau	Dumont	5	85	
Cabane	Cauthers	11		
Charet	Sneider & al	18		
Cote	Amiot	23		
Coyteux	Robitaille & al	25	82	
Chapman	Walson	26	36	63
Chaffers	Cumming & al	30		
Cazavan	Hudon	31		
Clarke	Dupond	32		
Cuvillier	Handyside	38		
Curot	Guilbaut & al	54	63	
Cringan	Rivard & ofs	55		
Cuvillier	Dufaux	61		
Cuvillier	Torrance & al'	62		
Cartier fils	Pacquet	68		
Cotterell	Doherty	74	85	
Cobb	McKenzie	93		
Courteau	Marien	99	116	
Cadieux	Campeau & ofs	109		
Carmichael	Gray & ofs	120	214	
Consigny	Boudreau	124		
Chapdelaine	Hus	125		
Cheney	Fuligh	145		
Cliff	Delery	145	178	
Carter	Lighthall	146		
Clarke	Bowron	147	179	
Cloutier	Monette	159		
Collins	Drysdale	165		
Cummings	Baird & al'	176	193	
Cassidy	Cameron & al	181		
Clarke	Crevier	190		
Clancy	Fisher	192		
Cherrier	Duvernaye	192		
Campbell	Cheniere & al'	198	240	
Carter & al'	McVicar	203		
Carter	Neill	209		
Cardinal	Labadie	215	241	243
Cameron	Dods	225		
Clarke	Crutchie	240		

Delisle	Delorimier	2		
Drolet & al'	Wells	3		
Descelles	Willet	19	68	
Davidson	Piccard	23		
Dewer	Mcdonald	23		
Drapeau & al'	Charbonneau	28		
Drouin	Labrosse	28	79	116
Dufresne	Limoges	31		
Donegani	Donegani & al'	60	104	
Demers & al'	Poissant	69		
Delvechio	Kaunlz	72	83	
Derome	Derome & Econtra	74	232	
Dunning	Forrester	121		
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February Term. 1837.

Wednesday 1st. February

Pres.t

Ch. Justice Reid
Mr Justice Pyke.
Mr Justice Rolland.

No. 1105.
Smith et al
vs
Mittleberger
et al

On motion of Mr Sol. Gen.l for the Defrs that the constitution of an attorney by the pltffs in lieu and place of the late Mr Grant, be rejected as irregular the same having been made at the Greffe in vacation, and without the authority of this Court.—

Mr Mondelet for the pltffs. The mere substitution of the name of a new attorney in lieu of the one deceased, may be made by the party at any time on giving due notice to the adverse party, and without any act or consent of the Court The Rules of Practice provide only for the case of an advocate withdrawing himself as advocate of the party in Court, which requires notice to be given, and the leave of the Court, but no provision is made for the present case, which is the act of the party alone from a necessary cause and to prevent delay. It is besides consistent with the law and practice of the Courts of the Chatelet — see 1 Pigeau. 347. and form of the Constitution. 248. — Ravaut. 125. — Jousse on Tit. 26. art. 2. p. 454. —

Mr Sol. Gen.l in reply — no new attorney can come into the Cause, nor do any act whatever as such without leave of the Court. The death of Mr Grant is not ascertained, nor can the Court take notice of it — The appointment of a new attr is said to be a Judicial act, and no Judicial can be done in this Court, but during the terms, ~~which~~ during which only it has existence. —

Thursday 2d Febr. 1837.

Pres.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland.

No 1311
Beach
v
Dewell

On Pltffs mo to examine Mr Justice Gale as a witness, the objections raised thereto; and on Defts application that Enquete be declared closed —

Mr Boston for Pltff — the testimony of Mr Gale necessary to prove the indorsement of a note, & the time when the indorsn was made.

Mr Buchanan for Defendt objected to ex. of Mr Gale as he was at the time the advocate of the Defendt & cannot be examined as a witness as to the facts in question —

Ex parte
In Re Perrier

On motion of Mr Solr General for a writ of Certiorari to bring before the Court the proceedings had before the Commissioners for the trial of Small Causes.

No 1864
Delisle
v
De Lorimier

On Pltff's mo. for full costs on the Verdict —

No 2746.
Holcomb
v
Maybell

action on note indorsed.

Doucet for Defendt. The Defendt not proved to have been a farmer or trader. — The signature of Defendt has not been proved — a deposition of Costigan a witness for Pltff not closed & moves that exemption of the Cause be discharged and the party compelled to bring up this witness to close his testimony. —

No 719
Clarke et al
vs
Truax et al
&
Clarke et al opts

on hearing on law on the opposition. —
Mr Hart for Oppos^ts moves to discharge the inscription as having been irregularly made. no notice of tax^n of Costs —
Mr Boston for Plff the inscription is regular, and the motion cannot be admitted as no notice of it has been given. —
Mr Hart in reply, there was no notice given of the taxation of Costs, the day of notice was changed & a new date given of which he had no notice.

No 2168
Lowry
vs
McNaughton

On Plff's mo. for a further day for evidence —
Mr Driscoll for Plff — all necessary diligence done to get the witnesses, but from state of the roads they could not be brot forward —
Mr Boston for Plff — Two different instances of indulgence have already been given — no diligence shewn. —

No 232
Drolet et al
vs
Wells
&
Leyman et al
opts

On Law
Mr Buchan for Oppos^ts — contends that the property seized should be distrack, until the whole money of debt to Defend^r be paid. — The Oppos^ts are entitled to have the property, as not paid for —
Mr Lafontaine for the Plff — contends that the opposition cannot be maintained — The proceedings here shew that the property seized belongs to the Defend^r — The oppos^ts here have only their oppos^n after de conservation — The non-pay^t of the price does not give a right to the Vendor to revendicate the property —

Poth. Vente. No 475 — says, that when the purchaser does not pay the price of the thing sold, being a real Estate, the Vendor may be intitled to his action en revendication — but it is questionable how far this principle will apply, where the right of a third person attaches on the thing sold by the seizure of it, as in this Case. — and

where

where a considerable delay has accrued since the time of the sale, which creats a presumption of a credit being given to the purchaser, & by which the property becomes transferred to him. Poth. Vente. N. 323 — Here the sale is alledged to have been made to the Defendt in June 1833, which carries a presumption of such credit having been given to the Defendt by the Opposte —

For. Gr. Comr on the 176 art of the Custom, establishes, that by the Roman law, there was no privilege or preference given to the Vendor on the thing sold, unless specially stipulated, and that this law therefore the right of revendication became more necessary to secure to the Vendor this right of privilege But the Courts of France departed from this principle & allowed both the hypotheque and privilege to the Vendor although not stipulated upon the real estate sold by him and thereon the right of Revendication became less in use as being less necessary —

No 1105.

Smith & al
vs
Mittleberger & al

The Court granted the Pltffs motion, as the Rule of practice was considered not to apply, & according to the course as laid down by Pigeau p. 347. the notification to be given in such case is from Procureur to procureur, without any intervention or authority of the Court —

Friday 3d Febry

Pres.t
The Ch. Justice
Mr Justice Taylor
Mr. Justice Rolland

No. 2385.

Hodgson
vs
Simpson

On motion of Mr Walker for the Defendr for a Commission to examine one Joshua Henshaw as a witness in the Cause, who is unable to attend the Court on account of debility & sickness. vs

Mr. Driscoll for the Pltff. The state of the witness shews that he is incapable to answer to the questions that may be put to him from paralytic affection—

No 1875

Grece
vs
Cameron—

On Defendts motion to set aside the pltffs motion to proceed ex parte, and all the proceedings had in consequence, and that he be allowed to plead to the action.— Mr Walker for Defendr refers to the Affidavits filed in support of the motion.—

Mr Grece for the Defendr— no sufficient ground for granting the motion—

No 1088.

Carreau—
vs
Dumont.

Action de Complainte & reintegrande—

Mr Boston for Pltff. Defendr by violence dispossessed the Pltff of certain Mills of which he had the possession under a lease from the father of the Defendr— considers the Damages to be great—

Mr Lafontaine for Defendr— the pltff is separated from her husband, who is not party in the action— the pltff alledges she was in possn as proprietor, & as such only can the present action— the bail does not give a possn— animo domini— besides the evidence shows pltff was not in possn— the possn of her husband not being in question here— the agreement wn the Defdr is wn the husband of Pltff— The Defdr does not possess here as heir of her father

father, but no right of his grandfathers title. —
The possn here is not what the Law requires. ante 1. Lt. 18. Ord. 1667. Poth. Proc. Civ. p. 104. — Plff has holds a later precaire —

Mr Boston for Plff — This action may be brought agt the proprietor for a violence committed by him — The evidence shews the possn of the plff, and his bail is a sufficient title —

Saturday 4th February.—

Pres.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland

There was no business before the Court

Monday 6th Febry

Present

Ch. Justice Reid
Mr Justice Rolland.—

№ 987.

Archambault
&
Devos & Jolicoeur
&
DeBlenry opt.

On Oppost— mo. to prolong rule of reference and to appoint a third expert in stead of Mr Deschamps as incompetent & can improper person & under influence of one of the experts named by Plff, Mr Lindsay
Mr Charrier for Plff objects, as the grounds insufficient

№ 531

Begly dab
&
Boudreau
&
Larocque ad
T. S

On Defend. mo. to quash the writ of Saisie arrêt
Mr Lafontaine for Defend— The affidavit is insufficient
There are three Plff. named in the Cause, but not as Partners— one of them Begly swears to the affidavit— he says that Defd. owes to Begly Knox & Co— $1800 — & a Saisie is asked for in the hands of 4 other persons— but the writ has issued at a much greater number of persons— The ord. of 1787. does not admit of the seizure of credits & effects — it applies only to debts & effects— By this Law only one writ can be allowed— The order of Judge is imperative in Briefs mon writs

Mon

Thanson — This order is granted without application — the order ought to be at the foot of the declaration as formerly reg by the order of 1785. on the writ of Sum.s — This is set aside only as requires the writ of Sum.s by Stat. of 1803 —

The order of the Judge is irregular in directing that a writ or writs should issue — the return is not mentioned — nor did all the writs issue the same day — this was irregular only one ought and could issue at most as all ought to have issued at same time — as the same cause of indorsed the issuing of the writ one day might not exist another —

There should have been a fiat for the writ — this fiat demands only one writ of the Defend.r — two or more ought to have been granted, & all the other writs must be annulled —

The 2.d fiat asks no writ vs the Defend.r but of his property in the hands of 3.d persons, but says nothing as to Defend.r —

The sum sworn to is only £1800 — but the writ is for £3000 — it is necessary that the liberty given to the party to give Security should be inserted in the writ — and also the power given to the party to pay the debt & costs as provided by Ord.r of 1787 — on the 2.d writ there is no such condition given either as to Security or pay.t — refers to case in appeal is Richardson v Malson — Stuarts Reps. 390.1

The second writ is irregular it is different from the first, as it — regards the monies & debts — whereas this writ ought to have been the same as the first writ — & is not in the words of the Statute —

The writ is to serve for £3000 — when debt sworn to is only £1800 — the Sheriff made no demand to pay nor give Security before seizure the Sheriff could not have ascertained the Security required —

The writ issued in the names of three persons, whereas the affidavit refers to a partnership of Bagby Knox & Co — being a partnership &c is different from a demand by individuals to whom no debts might be due & in favor of whom no debt is sworn to — one of these three persons could not have rec.d the pay.t of the debt for all three — the debt became divided among 3 persons — & the Sheriff could not have taken Security but in that way — 4.t Pardessus p 20-22. No. 975. to No 977. partnership a different thing & body from Individuals — & all proceedings should be regulated accordingly —

There is no proper indorsement on the writ it ought to be signed by

the

the advocate sues out the writ, according to the rules of practice — the Profts cannot verify this assessment — Dec. 8.

The ordre of 1785 refers to the oaths of the parties as to the Capias, but the ordre of 1787. requires legal proof of the debt, qch cannot be the oath of the party

There is no commandement de payer before seizure, nor to give security — as required by ordre of 1667. — the P. Verbal does not specify the domicile of the Saisissant Tit. 33. art. 1. —

No copy of the P. Verbal of seizure was left with the Defendr but a paper different from that annexed to the return of Sheriff — qch is informal & wholly different from the original — the copy is not signed by the bailiff & persons assisting at the seizure as it is reqd — Ordre of 1667. tit. 33. — art. 19. —

The bailiff has attached goods & chattels on writ of debts & effects — The 2d writ is to seize debts & effects, but the Sheriff has seized goods & Merchandizes — so that the return shews a different seizure from that required. —

2d writ, all goods moveis debts & effects — whereas moveis & credits have been seized. —

The bailiff does not say that he has served a copy of the first writ on the Defendr — The service was made after sunset by the Sheriff, qch was illegal — the bailiff makes no mention of any service —

No persons have signed as Records or gardiens on the seizure. — The seizure stated to have been made between 26h & 31h Jany but not shewn the regular course of proceeding nor whether made by night or by day. —

Mr. Walker for Plff

The first ground is general —

The 2d. objection not founded — the language of the affidavit is that required by the ordre 1787 — there is a debt sworn to — & all other requisites, the Cause of action not necessary to be stated — the law 6 Geo. 4. c. 8. shews that the nature of the debt need not be set out. — Scott v Starnes, so held in this Court — the substantial parties are the same in the writ as in the affidavit as well as in the declaration — the affidavit of Begly extended to the Debt of all the parties — as being a joint debt — The writ refers to the declaration in qch the Cause of action is more particularly set out. —

The affidavit is only for £1800 but the action is for £3000. but a reference is made to the manner in which this sum is demanded. and writs have always issued in this manner In cases of Capias, the writ sworn to is indorsed on the writ although frequently a larger sum than that sworn to is demanded yet the security to be taken refers only to the sum sworn to — The act. 7 Geo. 4. ch. 8 - allows order of the Judge for such writs to be written on the affidavit, as the declaration was drawn — afterwards. —

1 East. 334 - affidavit held to be part of the process & is explained by the declaration —

The Judge who receives the affidavit may allow the issuing as many writs as requisite under ~~that~~ order of 1787 — nor was it necessary that all the names of the true Bail should be named in the affidavits —

2 Str. 2170 - case of ca. ~~after~~ 5 years after the affidavit sd under but here only 4 days elapsed —

The fiat runs over the demand for both writs —

The right reserved to Defendt to give security is not necessary to be specified in the writ, where goods & effects are seized - as in this different from case of Malcom v Richardson. where books & papers only were seized. —

Not necessary to insert the names of all the True Bail in the affidavit - there being no sufficient time to do so —

The endorsement of the debt on the writ of attachment, is regular, as the rule of prac. does not apply to writs of Bail. writs - by order of 1787. the Profft is bound to make this indorsement, as the writ cannot issue till the indorsement is made on the writ & becomes a component part of the writ itself — Writs of Ca. under order of 1785 require no such indorsement. & so the book of practice provides —

Reg. 10 & 11 Geo. 4. ch. 26 - the duty is imposed on the Profft. —

The Plff did right to distinguish the writs of effects in hands of Defendt & in main-tenure — the words of attachment being usually somewhat different, but in effect the process is one & the same as to the property to be attached —

No commandment necessary to be made by the Sheriff before seizure — applies only to cases of Execution under order of 1667 — here the Declaration shews the domicil of the party —

as to the nature of the proof of the debt in cases of Saisie-arrêt being legal proof — The practice has always been to admit the affidavit of the party — & this is sufficient under Ordre of 1787 which refers to the affidavit of the plff himself. —

The copy of the P. Verbal served on the Deffr is a copy of that returned by the Sheriff, to gr. there are some additional proceedings. —

Mr Lafontaine in reply. The names of the Tres Saisis must be set out in the affidavit, without gr the proceeding is irregular —

The affidavit for £1800 - cannot warrant the saisie for £3000 —

Only one writ ought to have issued on the affidavit. —

Ex parte Jos. Rousseau } On motion for a writ of Certiorari — on notice to Magistrates

Mr Clrc. Mondelet for the Magistrates - This writ is issued under discretion of the Court — The Stat. Gvo. 2 ch. 13. allows writ only when Indgt is rendered within 6 months — This not sworn to. — The merits of the P. Verbal are here attacked — There is no affidavit of the service of the Rule on the Magistrates — Paley on Convictions — No notice given of security as required by the Statute —

Mr. Grey for the Gr. Voyr - The Certiorari never granted but upon good grounds — no affidavit here of any grounds to warrant the issuing the writ — Pratt Dy. the Court will not grant it where they see the Court has drawn the right conclusion from the premises — 1 Deacon. 209. 1 Burns Just. Certiorari not granted but to try if the Court below has not exceeded its jurisdiction —

Mr Bleury for the applicants. The affidavit shews that the Indgt was rendered within the 6 months — This is sufficient. — There are sufficient grounds alledged in the affidavit of the insufficiency of the Indgt. — The notice to the Magistrates is made by a sworn officer of this Court. — Hands. 28. 29. —

No 845 Cubbane vs Caulkers } action for séparation de corps —

№ 1815
McNaughton
Lowry

Action petitoire

Driscoll for Defendt. This is not a petitory action but possessory – no proof any act by which Plff was put in possession – nor any proof that Plff has acquired the property in the land – he proceeds only from persons who are said to be the agents of the proprietors –

Mr Borlon for the Plff – The title set up by the Plff is sufficient to entitle him to bring this action, and the Defendt should have met this by some other or better deed –

№ 1901.
Russell
–
Beauregard

Action on obligation –

Mc Cleary for Defendt – mistaken in date of obligation –

№ 1066.
Kidd Cormack & Co
&
Gray

on re-hearing –

Mr Ferrars for Defendt – nothing is due to Plffs the Partnership was dissolved before the debt was contracted –

Tuesday 7th February. —

Pres!
Ch. Justice Reid
Mr Justice Rolland

N° 2660
Molsons ad
vs
Teodore

On law. —
Mr Bleury for Defd — the debt is stated to be due to John & Wm Molson & it is Wm & Thos Molson who demand payment —
Mr Taylor for Plff — action for goods sold & delivered by Plff. to Defnd — there are several Counts in the declaration and causes of action regularly set out — the plea of Defences en droit goes to the whole declaration. & is bad; Shews on pleads — Com. Dig. v° Pleader. —
Mr Bleury in answer, the Defndt pleads is correct —

N°4841
Bruneau
&
St. Amour
&
Dorizani
Gart

action on dr. d'hyp.
The Garnt appears and pleads by Mr Perrault
1st — That the object for wh Indt was given are not of a nature to create a hypothèque —
2d That the Intervs party has himself a privileged mortgage on the property in question, & is therefore entitled to a Caution, that in case of Plff obtaining Indt he be obliged to give security that Garnts debt be paid —
3°. Is for expenses & adjudications on the property, & concludes to same security —
The Indts of the Inferior Court do not create hypothèque reasoneth as all such Indts give right of satisfaction only on the moveables — originally in France all Mortgages were conventional, it is only by the art. 53 of Ordre of Moulins, wh hypothecates the mortgage by Indts of Court —

art. 3

There are the Lords en dernier ressort – cite Domat – 1. Pigeau 824 – unless the party can sell the real property, it cannot be affected by Mortgage, as the right of mortgage necessarily implies this right –

In the Superior Court, the real rights of the parties cannot be determined upon – If this right exists in this Court, it will extended also to Judges of the Commissioners for the decision of Small Causes –

There were certain cases in France where Lords had no hypothèque, as the Ecclesiastical Courts –

on 2d. obj. A. Desnz. Vo Decln 8 Hyps. p. 21 –

on 3d Exception Id. — p. 21 — that the Garant is entitled to plead in defence — as having taken his fait & cause –

Jugmt 7th. 1830 – Davis v Gagnon & Bromley

Mr Bruneau, This is new light, but goes to destroy all that has been said hitherto – The Indemnification Act of 1793 constitutes but one Court of K. B. having two branches or Juris Dictions – the Supreme Superior Term – but both are parts of same Court – Pothier. Hyp. 423 – Repse Vo Hyps. p. 649 –

That the Hyp. of the Garant do not entitle him to a Caution this right of privilege claimed by Garant, has acquired by him only since his appearance in this cause, for the Lods & Ventes he has paid to the Seigneurs –

As to the ameliorations, they cannot be allowed in the manner demanded – the demand is made in the name of the Tiers Detenteur who demands nothing, yet Garant claims these ameliorations should be paid to the Tiers Detenteur –

Mr Perrault in reply – The names of the Courts constitute no proof, it is their jurisdiction it is here in question –

No 2640

Molson
vs
Theodore

Dec law

M. Bleury - action by Thos & Wm Molson for debt due to John Molson

No 628.

Blache
vs
Kountz
&
Benoit Cur
gar

Ou Report of Experts,

Mr Lafontaine for Plff - the property cannot be divided and the improvements are estimated at £430. - of this the Plff must pay the half - Here Plff & Defendt being both proprietors may each demand the licitation, but the question then is whether the whole of the sum ought to be paid to Defendt before he is obliged to allow the sale of the whole.

Had the Defendts brot the action en licitation, he could not have demanded the reimbursement of the ameliorations from the Defdt -

Mr Cherrier for Defendt - The principles advocated by Plff do not apply in the case of the action petitoire, but may be argued in the case of the action hypothecaire - 1 Lebrun 282. No 35. Sect 1 Remarks 295. Remission. Domaine, 7 Poth. Domain p. 84. No 185. p 186 - Fruits & revenus ought not to be allowed after the Tiers Detenteur, Remarks tit. II 300. Auzeant p. 196 - 3 Ferrier. 3 vol. p. 848 - due only after Tiers Detenteurs only from day of demand -

Mr. Lafontaine in reply - the right of Dower is ascertained by the marr contract: but became open only by the death of the Gr. father

Mch Term 1833.

No 1917

Ewing
vs
Gardner and
Todd. T. S

Action on promy note, & on decln of T. S. -

Mr Lafontaine for Plff, has contested decln of T. S. - and contends he has shewn evidence of T. S. having property of Defendts in his hands - There is proof of collusion between T. S. & Defendts - Mathew Wood proves the sale to T. S. of sundry goods, gt were not pd at the time of the T. S. - That sundry effects were carried by old Gardner to T. S. - The son brot his action en Revendn agt T. S. this action was discontd but after the present saisie arret - The T. S. did not deny having bought the goods, but that he had them from Gardner the elder as Tutor of his child, & that he had given his note

for

for them — The T. S. has not answered to all the Interrogatories the second act. is in the name of Gardner fils & comprehends in it the first act.

Mr Griffin for the T. S. — The date of the note on wh the action is brot is of moment here — The action did not lie agt Gardner fils, as no proof was made of any delegation from the note agt the drawer — There is no allegation of fraud or Collusion between the T. S. & the Defend in either of them — at time T. S. got the note to Gardner jun, the latter owed nothing to Gardner fils & consequently T. S. cannot be considered to have defrauded Gardner fils — in May 1835 —

No 506
Rodk Mckenzie & Turgeon dels Oppn
& Bowie vel Intervs

On demand en Ratification — & Opposn —
On Law —

Mr Lafontaine for the Intervs party contests the claim of Turgeon dal. — Neither of the Inventories nor the act rendered by Mr Oldham mention any thing of the 10,000 claimed by the Opposts — but mention is made of the 2400 lent to Chs Bt Bowie — a partage is made of the property by Mr Oldham, signed by the parties — nothing is there is said of this sum of 10,000 — under these circumstances the Intervs party plead the prescription of 30 years, besides the other pleas —

Mr Turgeon for the Opposts — There could be no prescription in this case, as the demand could not be made until the death of the usufructier, of whom the Opposts are the children — The Opposts debt of the oblgn is of 10 May 1796 due by Chs Bt Bowie to his father besides what was paid to him en avancement d'hoirie — Rep. vo Substitution. p. 534. sec. 2. 9. Id. vo Prescription. pp. 342. — Poth. tr. Obs. p. 2. No. 22. — Id. vol. 8. tit. 14.

№2099
Warwick
vs
Dumont.

On Case
Mr Bender for the Plff —

Mr Lafontaine for Defendt. It is sd that Dumont pre deced in 1821. yet that afterwards a Lettre was obtd of him — & that certain propositions were made of arrangements between Pltf & Dumont & his Creditors — not stated when the payts were to be made of the wheat to be paid to the Creditors — If the deeds it is not shewn that this arrangement was ever ratified by the late Dumont, or was bound by this — arrangement sd to have been made by a procureur not authorized —

Mr Bender for Pltf contends that the declaration is sufficient — Rept vs Ratification. this not reqd when a special authority is given. 2 Arpin 357 —

Wednesday 8th February. —

Prest.

Ch. Justice Reid

Mr Justice Rolland

Mr Justice Gale. —

Stuart vs Longmore — On motion of Mr Buchanan for Plff for delay to file exhibits — over till to morrow

Charet & Schneider et al — On motion of the Plff to ex. a witness as to certain ~~effects~~ facts discovered since the last proceedings in the Cause —

Mr Chs Mondelet for Defdt — objects that the Plff's Enquete had already been closed in the vacation & further because a day was given at a subsequent period for the last day on 7th Inst. to hear one Jos Rousseau — whose testimony was afterwards cont. to the first ~~witness~~ day in Term — The present application is for another witness to facts which were within the knowledge of the Plff before the last regular days had passed. —

Poirier & Poudrome — On Requete civile presented by Mr Lafontaine praying that

Rolland vs Bousquet & Gugy Sheriff mis en Cause. — ~~Mr Gugy on behalf the Sheriff moves to fyle the publication —~~ On Rule on the Sheriff

Mr Mondelet for Plff to set aside a decret had in this Cause from the informality of the proceedings — 1st because the said lot of land not sufficiently described, the designation of the bailiff and in the Gazette are different — that of the bailiff being correct — 2 Because 3 publications of sale were not made of the Sale — The bailiff entitles that he caused certain notices to be made, but not that he made them himself — the notifications were made in English only, if made at all. 3d abandons this moyen. — 5th is general —

Mr Gugy for the Sheriff, This case is of importance & requires particular notice — Three grounds are opposed to the rule — 1st Plff has no interest in the Cause. — no proof that the property has been sold for less

≠ than

№ 319
Decelles
v
Willett

Def^dr mo. by Mr Blumy to quash the Saisie Gagnie in this Cause, inasmuch as no such writ could issue for the sum due being only £1. 10– as to the sum demanded it consists of damages, for wh no such writ could issue, and in any Case must have been a Saisie-Gager.– And further that no mention is made of any record having existed at the Seizure–

Mr Cartier for Pltff– The demand is founded not only for 30/ for house-rent, but on a droit de Suite, as the tenant had conveyed away his goods and to another house– In case of Saisie-Gagnie there is no necessity to have a record, as the party saisi is himself the Gardien of the effects.– Refers vo Record.– refers to the redaction de Code

≠ than its value, Of this there is no proof, apparent on the record– 2dly The pltff here is assuming the right of another person– 3dly The Pltff is himself the garant of the sale in this Case– the act of the Sale, & the proceedings leading thereto are different– during all the time of 4 months the Pltff did not complain of the defects now alledged– The Pltff assumed here the responsibility of the proceedings and is treated as a person to purchase the property for him produces affidavits to this effect–

Moves to strike out the additional publications made devant the bailiff, besides those made by another whose return has been made.– claims right to have his reasons in writing

Mr Mondelet in reply– The irregularities here are too striking to be passed over– The Pltff is interested in the proceedings– The Court is bound to see that the proceedings should be regular–

The adjudicataire called made default.–

№ 1845.
Patton
v
Andrews

Action for a horse killed by that of Defend^dr–

Mr Meredith for Pltff states case of the injury sustained by the Pltff's horse from that of Defend^dr on the Island of St Helens–

The

The evidence here is circumstantial — The Defendt's horse was put on the Island without leave, 3 Geo. 4. ch. 31. sec. 12 requires that Stud horses shall be kept in a stable & not allowed to go at large —

The nature of the injury rec'd by Pluff's horse shews it was done by the kick of a horse, whose shoes were turned out at toe & heel — being rough shod — There were then 6 others horses on the island, but none of them rough shod

Mr Driscoll for the Defendt — contends that there is no evidence to establish the injury being done by the Defendt's horse. —

—

No. 701.

Vass. v Kurczyn —

action for goods sold.

Driscoll for ~~Defendt~~ Pluff contends that he does not owe the amount from certain circumstances & transactions that took place between the parties — refers to the evidence — The question as to the payt. of interest must be determined in favor of the Pluff — also the price of bags must be charged to Defendt — as he retained them — allowing the deduction of rice

Mr Fisher for Defendt. The whole amt. of difference between the parties is about £2. — tender made of what Defendt really owes w. costs up to that time — but at the time the action brought was £5. 2. 9 — This is admitted. — It has been proved that interest was not usually charged between the parties —

Driscoll for Pluff. The charge for the bags came into the action in consequence of the Defts plea — to shew the stat. of preceding transactions — The proof of interest is made out —

№ 722
Glackmeyer
v
Forbes –

On law –

Stanley for Defend^r – declr deficient – it refers to an account filed, to which Defend^r is not bound to plead –

№ 162.
M^c donald
v
Dewitt. –
&
Grigy, mis en Cause

On rule on the Sheriff

M^r Buchanan for Sheriff – states that the warrant was delivered to bailiff selected by the Pltff. – who has not made his return. –

№ 141
Lacombe
v
Porteous
&
Moffat –

On Report of the Surveyor

M^r Cartier for Pltff – The Pltff claims a right to draw boughs upon the Defend^rs land for conveying water to his tannery on a certain span of 18 feet now in question – refers to the titles under q^l this right is vested in the Pltff –

M^r Driscoll for Defend^t & Garant contends that there is no proof any servitude having been established on the lot of land in question – Delisle ~~from~~ who purchased from ~~Lacombe~~ Lidue sold to one Lacombe, and reserved a clause found in the original Deeds, but which he never was himself entitled to, of a right to take water from the rivulet across the lot now possessed by the Defend^t – but there exists no servitude

M^r Cartier in reply – In 1751 Boudria sold to Henri Jarray de Hauteclou sold this lot for a tannery – this is the title q^l gives the Pltff his right to day – Boudria w^h this gave the right to carry & draw water by the 18 feet mentioned in it to his tannery –

№ 741.

Shaw
De Rouville.

Mo. to quash process, because in the English Language & the Defendt a Canadian —

Mr Drummond for Defendt on understanding that this question had been determined in this Court and in the Court of Appeals, gave up the point.

Thursday 9th Febry.

Pres.
Ch. Justice Reid
Mr Justice Rouleau
Mr Justice Gale

Davidson v Piccard — On Defendt mo. to be allowed to proceed ex parte on his Exceptn as costs two grounds not answered —

Mr Hart for Pltff — The Dft is in error, if he persists in his exception he ought to have called on the Pltff to join an answer, — The exception as to the reference should have been made by motion

Côté v Amiot — Mo. for full costs on Verdict of Jury. —

Pelletier v Dewitton — On Dfts mo. to set aside the Interrogatories as irregular — Hart for Dfts — action of trespass for having taken violent possn of Pltffs land — cites case of Fitzgerald v Hart, similar interrogatories were rejected —

Mr Boston for Pltff, the case cited does not apply, as there was then a question of a libel —

Dewer v McDonald — On mo. for full costs on Verdict of Jury. —

No 357
Stuart v Languedoc — On pltffs mo. for delay to him to file his exhibits

No 1162
Fraser v Lindsay & Wm Fraser by sup: Dismt — On motion that Defendt shew cause why he should not be held to pay to the Pltff the balance of the monies ~~in his~~ due on the Judgt in this cause —

Mr. C. Day for Defendt. an account was filed by the Defendt. by wh. he acknowledged to have in his hands £234 – & submitted the right of pltff to recover & the Court the Court adjudged a sum of £230 to the pltff – but as there were sundry fees of Counsel & other charges incurred, the sum in the hands of the Defendt. amounted only to £214 But as the Pltff did not reside in this Province & had no person legally authorized to receive the money, the Defdt allowed Execution to issue that he might be discharged on paying to the public officer the money in his hands – The present application that the Defendt. be held liable personally for the balance of the Endt. cannot be granted, as he has complied with the End of the Court as far as bound, but to render him personally would require a special action –

No. 1449.
St Germain
vs
Dorions
&
al. Garnts

Action en declr. d'hypo. – for Dower. –

Mr Lafontaine for Pltff. the plea was that Pltff had accepted the Succession of her father, & on this parties have gone to proof, but no proof of this fact, and Pltff. demands that the exception be dismissed.

Mr Scott for Defendt. contends that the evidence is insufft. refers to testimony of Jacques Paquet –

No. 2143
McKay
Scriver –

action to recover fees as a bailiff –

Mr. Bleakley for Pltff – Pltff was appointed Guardian for 20 months, for which demand is now made, in a suit of Defdr. agt. one Ivy – The nature of Pltff's services is proved –

Mr Nye for Defendt. Pltff is not entitled any thing, he had no duty to do, & Mr Ivy agreed to give him 20 dollars for all his services –

№ 2389.
Foley — vs — Kurczyn

Action for work and labor as a plaisterer
Mr Meredith for Pltff. The action is supported by the evidence adduced.-

Mr Fisher for Defendt — admits certain parts of the demand and submits a statement of the objects contested.—

№ 1954
Turgeon — vs — Arnoldi

Action for house-rent — Nothing send Case submitted

Mr Fisher for Defendt — ~~by bail~~ Defr — was to have possn as soon as the house should be completed, — ~~The Defendt did not~~ enter into possn in June, but not finding the house finished sufficiently, he made a protest agt the Pltff — The parties have gone to evidence in this case as to the State of the house ~~Workmanship or proof in the description of the work~~

№ 292.
Coyteux & Robitaille — vs — Tessier. Cur Coyteux opt

Opposition for certain costs of Apposition Laid out by Pltff

Mr Lafontaine for Pltff — The Defendt made an opposition qt was dismissed — and the question whether the Pltffs are entitled to be paid by preference for these costs, these the Pltff contends to be due to him as made for the general benefit of all the Creditors — 266. Proc. Civ. Pothier. — Hericourt 205.

Friday 10th Febry.

Prest.

Ch. Justice Reid.—
Mr Justice Rolland.—

Grant-
Lapensée

On Plffs mo. to reject the Defendt plea a la forme as having been filed too late—

Mr. Nye for the Defendt the plea is not to the forme and regards the merits, & has been pleaded with a plea to the merits—

Molson et al
&
Theodore

On Defendts mo. to discharge the Inscription for Enquête as contested causes are not heard en Terme—

Mr Taylor for Plffs contended that Rule of practice was positive as to cases of the present description where sham pleas were filed But the Court considered that the Rule having been made under particular circumstances, had long ceased to be observed, as tending to a too general introduction of Enquêtes in Terme— & granted Defendts motion—

Saturday 11th Febry

Prest.

Ch. Justice Reid
Mr Justice Rolland

Chapman
&
Watson—

On Plffs mo. to reject a plea of exception to the addition given to the Defendt be dismissed as filed too late—

Driscoll for the Defendt This is not a plea of exception à la forme— it may be answered instanter verbally, or may be heard on the plea to the merits— This is a plea of abatement—

Perry
&
Doyle

B Benches

Monday 13th February.

Pres:

Ch. Justice Reid
Mr Justice Pyke.
Mr Justice Rolland
Mr Justice Gale:

McKinnon Sol
v
Campbell

On pltffs mo. that the surviving partner of the Pltffs be permitted to carry on proceedings alone and in his own name as surviving partner.

Mr Doyle for Pltff: the pltffs were copartners in N. Canada, and by the laws of that Country the surviving partner has the right to carry on the suit on the death of his copartner, and therefore the surviving partner Boyd ought now to be allowed to carry on the suit. The late partnership of the pltffs was bankrupt, & this suit is carried on at the instance of the assignees.

Raymond — 346

Mr Driscoll for Defendt. This is a mode of judicial proceeding which must be followed in the Country where the action is brought, but there is no proof of what the laws of N. Canada in this respect are.

O'Callaghan & Doyle —

On action for assault

Mr Perrault for Pltff, moves to rject an application of Defendt to fyle certain journals on record in exculpation, a question which has already been decided.

Mr Sexton for Defendt. This not a similar question to that already decided. The papers are offered in mitigation of damages, & facts wch he could not plead in justification, and exhibits certain libels published by the pltff agt the Defendt.

Ex parte
In re Bte Perrier

1. Jour. Jurisp. Civile
p 430. sec. 7. - p. 435

On motion under notice that a writ of Certiorari issue to bring before this Court certain proceedings had before the Commissioners for the trial of Small Causes. - The rule served, but the Commissioners did not appear. -

Drapeau dal
&
Charbonneau

On Puff's mo. to amend his declaration -
Mr Lafontaine for Defendt. The damages demanded is a stipulated Damage, the amendment now demanded is of a different kind than that arising from the law, this is forming an entirely new demand -

1505
No 1288.
Trudeau
&
Labrosse -

on Report of Experts. -
Mr Cherrier for Pltff, reference made by the parties to ascertain damages for not having completed a promise of Sale made by Defendt - submits the Report -
Mr Robin for Defendt did not appear -

No 887
Parke
&
Handyside
dal

on law -
Mr Ch. Day for ~~Pltff~~ Defendts. The Pltff. concludes for a joint & several condemnation of Defendts but does not show that the contract declared on was joint & several as Chitty on pleads p 50 -
Mr Rossiter for the Pltff - The declaration is sufficient -

~~No 87~~
~~Larocque dal~~
~~&~~
~~Evans dal~~
No 2058.
Rassette
&
Gauthier dal

on law -
Mr Cherrier for Defendr. The Defendr as Inspector is desirous to know in what manner he ought to render account, & if obliged to account for monies due by the Town-Wayers -

Mr -

Mr Perrault for the Sous voyers — Pr Campau pleads that he was discharged by the ~~Inspector~~ Commissioner of his employ as Sous voyer and not bound to answer to the present action — The other Sous voyers are not bound to account to any but the Inspector — & if they are bound to act to gether they cannot be held solidairement to pay the Pltff the amount demanded the act 36 Geo. 3 Sec. 25 — Road act — the Sous voyers are under the direction of the Inspector, and accountable only to him. In any event the Sous voyers cannot be condemned personally having done their duty as ~~a~~ public officers. —

Mr I. Day for Daniel Waters, one of Defendts — has pleaded that he was discharged from his situation after making the contract with the other Defendts but has rec'd nothing for it he can account —

Mr Lafontaine for the Pltff. The Defendts have separated unnecessarily in their defence — The Defendts are here ~~individually~~ as Sous Voyers are bound to account to Pltff for the monies they have rec'd & are due to Pltff — The papers filed as accounts are of no value — The Contract made under the Stat. of 1832. Ch. 44. & by it Sec. 12. & 13 The Sous voyers are bound to render the monies to be rec'd on the Contract —

2 Wm 4. — Ch. 44 Stat. 1832. — Sec. 12. 13.

No 763

Torrance et al } Judgt for Pltff — agt Defendt Farquhar for the whole
& sum demanded, but agt Woodhouse for only one
Farquhar et al } half, as one of the Cautions, as the other Caution had
not signed the deed. —

I dissented from this Judgt — considering that if the deed was valid it ought to be enforced in toto as the Caution who had signed it, as solidairement bound

№2002.
Gedney vs Hoadlow & al — Judgt for Plff.—

№1566.
Mercure vs Pratt — & Deshautels mis en Cause — The motion of the mis en Cause for an allowance of full costs rejected — as the Court did not consider it could alter the effect of the Judgt rendered, which allowed the usual costs on a Rule Nisi —

№405
Thomson vs Ferrie. — The Court directed Judgt to be drawn up in favor of the Plff, allowing however to the Defendr the payts rec.d out of the Estate of one Rose the drawer of the bill —

№530. & №975.
Chalfers vs Cunning & al — A day was given to the plaintiff to prove the insolvency of Frijeau, the principal debtor. —

№1764
McWhorter vs Tate. & al — The motion for the reprise d'instance was refused as the plaintiff on whose behalf it was demanded had died before the suit had been returned into Court and before any instance had accrued —

№2585.
Watson & al vs Berrie — Judgt for plffs —

№2354.
Hall & al vs Bagg — Judgt directing partition of the Lands —

№ 1198
Kempley
vs
Bell

Judgt for Plff

№ 44
Dufresne
vs
Limoges

Judgt for Plff

№ 888.
Cazavant
vs
Hudon

Judgt for Plff

№ 347.
Stuart
vs
Rasco

Judgt for Plff

№ 982.
Robitaille
vs
Monjeau
&
Monjeau
Intervs

Judgt for Plff. Intervention dismissed

№ 2541.
Ouellette
vs
Durocher

Action dismissed

№ 1508
Lafontaine
vs
Valiquette

Defendt admitted to make proof of the bankruptcy of the endorser of the note, at the time of the indorsemt to the plff

№ 2107
Baggdal
vs
Boyer

Judgt for Plff

N° Surprenant v Papineau	Judgt for the pltff
N° 813. Clarke v Dupond	The Defendt plea maintained and proof ordered thereon.

Tuesday 14th Febry.

Prest.

Ch. Justice Reid.
Mr. Justice Pyke.
Mr. Justice Rolland
Mr. Justice Gale.

Ex parte Jn.Bte. Perrier } Mr Grey on behalf of the Commissioners, and moves to be admitted to state their objections to the notice & motion made for the Writ of Certiorari.

That the notice ought to have been given to the parties interested as well as to the Commissioners under the Stat. 13 Geo. 2d.

Mr Sol. Genl. states, that he has followed the usual Course as laid down in Hands Practice —

Anderson ~~Brown~~ v Bourdeau } Mr Lafontaine for the Defendt. moves that the Sheriff produce the warrant under which he authorized the bailiff to serve the Summons in this Cause —

Mr Buchanan for Pltff objects to the motion. — This forms no part of the proceedings of which the Defendt. has reserved his right of objection —

Mr Driscoll of counsel for Pltff — The object of the words of Summons having been obtained, it is improper to call in question the right or form under of the party was called

Fabrique de Varennes v Martigny } Mr Lafontaine for Defendt. moves to file an authentic copy of the document from the Registers of the Fabrique —

No 531.

Begly dab
&
Boudreau
&
Larocque dal

On rehearing on three of the objections raised by the Defendt

Mr Lafontaine for Defendt 1st as to 19th objn

There was no regle a application made to the Judge on which the order for Saisie arret was granted — By Ordr of 1785. no Summ. could be granted without an order at the foot of the declaration — The fiat of the Judge ought under this law state the day on which the Return of the writ ought to be returnable — The Stat. of 1801. dispensing wt this formality as to a Summ has no reference to a Saisie arret, but leaves the law as it stood under Ordr of 1787 & 1785. wch ~~reps~~ requires that at the bottom of the declr a day for the return to be specified The law of 1827 renews this necessity. ch. 8 — dispenses wt the necessity of indorsing the whole affidavit on the writ, but retains the necessity of a declaration, as upon it only the fiat was to be obtained —

on the 8th objectn That Saisie-arret has issued for a sum of £3000 while the Debt sworn to amounted only to £1800 — The interest of the Creditor ought to be limited to the Debt he swears to — The whole property of a Defendr might be seized to the amount of thousands on the affidavit for a debt of £12 or £15 — The writs always mention a sum in money —

on the 13th objection — That the P. V. of Seizure is irregular — Refers to the Case of Molson v Richardson as to the irregularity of the Saisie a effets seized — The ordr of 1667 requires the election of a domicile on the P. V. of Saisie — The Law requires, that a copy of the P. V. signed by the same parties who signed the original be served on the Saisie — This sous peine de nullité. — The Saisie lasted for several days yet there is no adjournt from day to day —

Mr

Mr Walker for Pltff

The 8th Object. There are several Counts in the declaration to which the writ applies.— The sum sworn to was the injunction to the Officer for what sum he was to take security — In the body of the writ must contain the sum for wh the demand is made — but the Sheriff can take bail for no more than the sum sworn to.— The forms here settled conformably to similar writs in England — there a man may be attached for any sum, but the Sheriff must liberate the party on obtaining bail for the amount sworn to — 5. J. Rep. 402.— 2 Earl. 305. the writ & declr must be consistent Vener. vr Abatement Letter F. No 3.— Tellon's Prac. 129.— where there is no intention to oppress, the proceeding even if irregular in form will not be set aside — 2 Chitty. 254 — the principle is always according to the sum cont in the writ —

10 Wentworth 254. 280. 327

2 Wilson 69

1 Chitty 254 —

1826 — 7

In case of Holt vr McNider, where a writ was granted without affidavit as certain debtors of promy. Notes — This was afterwards set aside.—

13th objection — No authority for this regularly. 1 Pigeau 622 does not seem to require it in Saisie-Arret — Jousse. 649 — the formality of signature not necessary 1. Pigeau 645 — The service of sumr during night is null, but not in a case of this kind 15 art 29 Ordr of 1667 requires service in day time 1 Pigeau 621. the reason given is to ascertain the priority of saisure — but for other purposes not of rigr. —

3 art. of 33 Ordr — will not apply to Saisie-arret — particularly in cases of this kind — Poth. Proc. Civ. p. 176 — 131. 132 Pigeau —

It was unnecessary to call for a guardian in this case, nor safe to do so — 178. 9. Poth. Proc. Civ. — The Saisissant is the person who offers the guardian — 1 Pigeau 624.— 181. Poth. Proc. Civ. 623. 627 Pigeau. Bailiff may remove the effts if necessary —

1 Pg. 621 — no election of domicile necessary —

19th Obj. — no declaration or petition on wh the fiat of the Judge was granted — The existence of a debt in cases of Saisie is a mere fiction of law, & often impossible — as in this case — The law of 1827. Ch. 8. does not require that the fiat should be

just

put upon the fact of the declaration — that such interpretation as attempted to be put on this law, ought not to hold —

№ 645.
Chapman
Watson —

On mo. to reject a preliminary exception filed by Defendt too late

Mr Day for Plff — The Defendt is sued by the addition of a Baker — The Defendt has pleaded that he is not a Baker but an Inspector of Flour — Cites. Repse Merlin Exception p. 802 — Exceptions founded on the nullity of the exploit are all preliminary, & ought must be pleaded & adjudged before the merits — Dec. de Rouen vol. 7 Vo assignation. p. 738 — № 149 — error in name is a nullité d'exploit. Id. p. 797 — p. 69. 471. Loussa — all exceptions of this kind must be pleaded before pleading to the merits. — Prac. Civ. Poth. — as to preliminary exceptions — This being an exception à la forme must according to the rules of practice be filed in the 24 hours —

Mr Driscoll for Defendt — This is not exception à la forme — as it alledges nothing of the form — refers to case of Jan 1824 — Gibbs & al. Vs Arthur — 1828 Feb. Harrison v Delorme —

№ 2377.
Thomas
G. H. Meade

On merits de Novo —

Mr Boston for Plff — action for Defamation — and for a malicious prosecution. —

Mr Driscoll for Defendt —

№ 407.
Fabrique de
Varennes
De Martigny

On rehearing

Mr Lafontaine for Defendt — The writing of Mr Marchand, is not in favor of the Defendt but of his Grandfather — The law does not give the Defendt a right to have a permanent pew in the Church — This

is

is due only to the Seigr Patron, or of the Seigniory ~~or~~ where the Church is built — There is only a possession precaire given to a person in the Church — there can be no right of such possession without a title from the Fabrique — all the parishoners ought to contribute according to the value of their pews, qt — may vary — but a permanent right destroys this right. — Mr. Marchand was only Vicaire had no right to give any directions in regard of the pews in the Church — It is given to Mr De Martigny and his heirs — here the Deft is not proved to be the heir of Mr De Martigny —
Dumas de Maillan vo Banc — the Marguilliers only have the right to give a lease of a banc — N. Desrot. Vo Banc. —
Admitting the payt by the Defendt of the annual rent of the pew the Fabrique did not thereby ratify the act of the Bishop of Quebec, nor deprive the Pltffs of their right in the ~~parish~~ property of the Church — cites 3 Vol. Journal Des and. 1 April 1683 — moves to give an Exhaut —

Mr Mondelet for the Defendt — The writing in the possession of the Fabrique, and their consent to the enjoyment of the pew in it, is a sufficient title to the Deft — the Defendt — quality of Seigneur de Fief gives him a right to occupy a pew in the Church — Does not consent to the production of the certified exhaut from the Registers of the Fabrique —

No 673.
Grant
vs
Lapensée.

Similar case to that of No 645 — heard to day —

No 2361
Shaw et al
vs
Beaubien

On merits
Mr Cherrier for Defendt — The question whether the Defendt is to be bound by his letter or by the conditions of the sale made at the Church door —

Mr

Mr McCord for the Pltff. There are other debts due on the Estate besides those of[illegible] came forward on the demand en Ratification, and are mentioned in the Inventory of the Estate —

No 2307
Arnoldi
vs
Sabourin

Action for Medical attendances —

Mr Lafontaine for Defendt There appears to have been an agreement between the parties for the annual attendances of the Pltff on the demand, in consideration of a certain allowance — The Pltff's acct is not proved, the allowance is considered to be fair if the articles were furnished — The acct is proved until the end of May 1832. There is no proof of the subsequent attendances or medicines —

No 729. Comte Lebrun liv. 2 ch 3. p 252

Mr McCord for Pltff the husband alone bound for the medical

No 312
Cuvillier dal
vs
Handyside

On Law —

Mr Platt for Defendt rests on 2d Exception —

No 81
Larocque
vs
Evans —

On Law —

Mr Hart for Defendt There was an undertaking on the part of Pltff & Defendt that she was to have a title given her of the lot in question on certain conditions — The Defendt was not the tenant of the Pltff —

Mr Charnier for Pltff — The promise to sell was conditional & those have not been complied with

Wednesday 15th. February.—

Pres.

The Chief Justice
Mr Justice Pyke
Mr Justice Rolland

Hitchcock & Ryan et al } on Pltff's mo. to open the enquête as having been closed without the hon. or consent of the Pltff's attorney —

Mr Blenny for Defendts no reasons stated in the motion for granting it —

Mr Greene for Pltff. it was agreed between him & Defendts counsel to allow the enquête to stand over —

Roi & Clarke } on Defendt mo. to reject a reply to Defts plea as insufficient

Mr Taylor for ~~Pltff~~ Deft. the answer to the Deftr exception is insufficient and wholly hypothetically —

No 1966.

Fournier & Prefontaine & Bourbonnière } Action on promy note.

Mr. Mondelet for pltff. the action brot before the note fell due on the principle that the Defendt was about to leave the Province, submits the evidence given as sufficient to maintain the action —

Mr Hart for Defendt — There is no sufficient evidence to shew that Defendt was about to leave the Province —

Mondelet in reply — The note is now due, & the Court may at all events give Judt for the amount of the note — considers the evidence of Defendts intention sufficient, the contradictory nature of the testimony may be accounted for from the manner in wh the Enquêtes are conducted. —

№ 140
McCulloch
vs
Boyd —

} action of damages for retaining Pltff's wearing Apparel.

Mr Hart for Pltff. The Defendt claims right to retain the cloathing as Pltff had contracted a debt in his house as a boarder — this Pltff denies, & also the right of Defdt to retain the cloaths

Mr Stanley. The evidence shews that a debt was due as alledged by Defendt and contracted by Pltff as a boarder in the Defendts house — This was not a private boarding house, but a tavern — & the Defendt had a right to retain the cloathing brot to his house by the boarder — it has been so decided in the Superior Court. —

Mr Hart for Pltff — The Defendt has produced no evidence to support his claim, even if he had a lien on Pltffs goods — Defendt had no lien. 2. Gr. Comt. Ed. 130 § 10. 11. & 12. & 16 — The Pltff was a private boarder with Defendt — as appears by the account he has filed, & this act. Then are articles of cheap ordinary expenditure & of such there can be no privilege —

№ 1260
St Aubin
vs
St Amour

} action for Loues & Ventes —

Mr Lafontaine for Defendt. The Defendt has paid a part of the demand for wt no credit is given in this Cause, but in another suit instituted agt Defendt since the plea pleaded by the Defendt but of this 2d demand there is no proof —

№ 1528
Thesmens
vs
Mesnier

} action on obligtn

Mr Lafontaine for Defendt. In 1823 Pltff consented an obligtn to Defdt for 800tt — altho' Defendt had only paid to Pltff 300tt — and to remedy this the Defendt gave his obligtn for 500tt — the balce on the said obligation — There is no minute of this acte, it is not in brevet, nor of the opposition before

two

two Notaries – The Defd. then pd to Pltff 36th – d of this the Pltff was to act to Defd on the above oblign Subsequently the Pltff pd Defdt 300th on act of the oblig of 800th – without any mention of the Contre letter, & from this it must be presumed the Pltff had rec the balce to complete the 800th – That afterwards Defdt prosecuted Pltff and obtained a Judt against him for the balce of the obligation of 800th – which the Pltff afterwards ~~paid to Defdt~~ recovered

Mr Bleury for Pltff The Pltff not having rec more than 300th on the oblign has been condemned to pay the full amount of the obligation, he ought to be indemnified in what he did not receive on that oblign

No 594
Bilaire
vs
Dadegault
& Lafontaine

Action for money lent &a –

Mr Borton for Pltff – Exh. No 13. has been proved a Defence must shew pay

Mr Lafontaine for Defts – Defts is widow of the person who gave this acknowledgt – There something due by the late Bilaire to an absentee, as his Curator – The document produced does not shew that any money was lent & advanced, it appears rather a depot – and as to the sum due to the heirs Bilaire it was pd by the Attg Lafontaine to Mr Holmes as holding the power of Attn of those heirs under an envoye in possession – But there are no conclusions to the declon in this Case –

Borton for Pltff – The debt is clear – The receipts given are to Mr Bilaire as Curator to heirs Bilaire – refers to exh. No 15 – a letter from the husband of the Defdt – by wh he acknowledges to have rec – and wh Mr Lafontaine pd to the heirs Bilaire – independant of this sum of 2000th wh is a totally different sum & for a different object –

Pltff moved to withdraw the inscription of the Cause

№ 1175
Guilbert
v
Beaudry

action for value of a Thrashing mill

Mr Cartier for Defendt admits he bot the Mill — the evidence here is illegal, this not being a Commercial matter — the Pltff is not a trader or maker of machinery by trade — If this proof is admitted it will appear that the Mill was purchased w garantie, as Pltff went several times to put the mill in order after it was in the possn of Defendt —

Mr Blenny for Pltff. has proved the value of the Mill to be £15. —

№
Moore
v
Brown —

Action for acct. Sales — & for value of a work delivd to him & not sold

Mr Hart for Pltff. has proved his demand by two witnesses the acct. Sales, — & also the value of Encyclopedia Britannica being 10/ £ Vol —

Mr Goddard for Defendt — states that Defendt had rect goods from Pltff. & rendered an acct Sales of others a balance due of only £4 — the Encycl: Brit. was sold for the best advantage that could be got for it —

№ 817.
Gibeau
v
Cardinals.
June 1827.
Prac. Consul 216.

action for materials furnished as a Mason —

Mr. Rossiter for Defendt — has pleaded Prescription under the art. of the Custom —

№ 1866.
Guy
v
Chapman
&
E contra

on Report of Experts —

№ 628.

Blache
&
Kaintz
Garant

Mr Charrier for Defendt — objects to the principle of compensn of the fruits & revenues with the improvemts to be allowed him

cites Repv. p. 346. Vo. ameliorations where it is said that the fruits are compensated wt the ameliorations, but where the party possesses animo domini, the ameliorations must be allowed in full besides the fruits. — Sirey p. 120. Instit: au Dr. Fr. — un possesseur de mauvaise foi is allowed his ameliorations —

Loiseau des Deguerpissts. p. 168. № 14 —

Dec. liv. 6. tit. 1. loi. 48 — 1. Vol. Hulot. p. 461 — 464 —

Domat. p. 47. art. 7. Cont. Vente.

Coquereau sur l'ordre 1667. on cont. tit. 28. art. 6 refus to the possesseurs de mauvaise foi —

Poth. prescn. p. 478. № 379.

P. 315. Repv. Vo Doscain —

Thursday 16th Febr.

Pres.t

Ch. Justice Reid

Mr Justice Rolland

Mr Justice Gale...

Ex parte
Jn.o B.te Perrier

Mr Gerry for the Commissioners — The right of evocation claimed befor the Commissioners was that the same should be had before the Superior Court. The affidavit on wh. the application is made ought to be special and contain all the grounds of complaint on wh. the right to obtain the writ of Certiorari is demanded 2 T. Rep. p. 89. Rep.r Eaton — Burn's Just. —

That there is not enough stated in the affidavit to ground the application. The act of 6 Wm 4. ch. 17 — that fixes the jurisdiction of the Commissioners, shews that the demand was within that jurisdiction — it may be presumed to be for a mere personal obligation — It admits the proceedings befor the Commissioners as certified ~~before~~ by their Clerk — But the Evocation is granted only to the Inferior Court, where the ~~evocation~~ cause could be heard & decided, & this right was given to avoid the costs — It is also a question whether the contest was of a nature to be evocked according to the terms of the Judicature Act of 1793 — This is a mere personal action. The security arising upon it is merely accessary, and the Commissioners had jurisdiction —

Mr Solr. Genl. for the application — refers to Rules practice regulating the course of proceeding — The affidavit here is full and sufficient — The action regards a future right. — The Stat. has given the right of Evocation — but this right of Evocation is given to either the Superior or Inferior Court — Were the rights in future would be bound — That the party should have availed himself of the right befor the persons appointed to hear the reparation —

Hodgson
vs
Berthelot.

McTaggart
vs
Smith et al } On Defendr mo. to be permitted to enter appearance for Defts under circumstances stated in the affidavits filed

Mr. McDonell for Pltff. The affidavits filed are not sufficient to warrant the application —

Lebrun
vs
Kane — } Motion of Defendt that action be dismissed from want of proceeding for three years —

Mr Perrault for Pltff — says that he has filed an answer to the exceptions of the Defendt — and the Cause may now be heard on the exceptions —

Nelson
vs
Nickless } On mo. of Mr. Meredith to be permitted to file an appearance for Defdt — on taking off defaults of him & paying Costs, on the affidavits produced —

No 607
Ferguson
vs
Hart } action for house rent —

Mr Driscoll for Pltff — Pltff leased 2 offices to Defendt for 2 years — Defendt took possn on 1 May 1833 — and occupied the other part by his sub-tenant Mr Sweeny — and Defendt occupied to 1 Novr 1833 — he gave up his lease to Mr. Weir who remained in possn until 1 ~~May~~ 34 — when Defendt resumed the possn — and kept it till 1 ~~May~~ 1835 —

The lease ~~not having been~~ with signed by the Defendt yet the Pltff has declared for the use and occupation of the offices — and the case rests on the proof of this fact — It is not denied that Defdt occupied from 1 May to 1 Novr 33 — but denies that he resumed the occupation on 1 May 1834

but

but that the rooms were occupied by the partnership of Hart & Scott — but the Defendt's letter shews the contrary as he then intimates his intention personally to resume the possession — To shew that Mr Sweeny was the sub tenant of Defendt, another letter or writing is produced addressed by Defendt. to Pltff

Mr Day for Defendt — The Count upon wh the Pltff sues to recover is for the use and occupation of certain premises but mere use & occupation raises no obligation to pay rent — the mere occupation may be of different kinds not creating obligation to pay rent — there is no proof of any promise to pay as stated in the declaration — the only proof of such occupation is only for 6 months from 1 May 33 to 1 Nov. 33 — but the occupation of Hart & Scott cannot be considered as the occupation of Defdt — alone — & then wd have req a special count for this occupation of a partnership & their joint & several liability there — The lease afterwards produced shews there were four apartments let for £35 — but the declr is for the use & occupation of only two apartments at the same rent — Moves to reject the testimony of Scott the partner of Defendt —

Mr Driscoll in reply — The Count for the use and occupation embraces all the objects of the demand — as apartment means not a room, but applies to any suite of rooms communicating with each other — Defdt admits that under the written lease he owes £35 — but setting this aside the Pltff wd be entitled to £7-10 — dressmr to Pltff his further recourse —

No 2716.
Ex parte Archambault &al —

On motion for a mandamus to proceed to the election of new Magistrates

Mr

Mr Cherrier for the applicants - from 1828 to 1834 - the Notables were called to assist at the assemblée of the - parishoners for the election of Marguilliers, but in 1834, an Episcopal order was issued directing a different course of proceding to the exclusion of the rights of the applicants. The present application is to enforce those rights - In 1834, a marguillier was named without the participation of the applicants, he did not act, but one Bro was elected in his place in Augt. 1834 at whose election the present application is made - to this there are 2 objections, that the Curé presided at the election instead of the marguillier en charge - and 2d that the parishoners were not called to that assemblée - This right necessarily arises out of the nature of a Fabrique - this different from a - Corporation qe - is subject to higher authority - The term Fabrique comprehends as well the temporal rights, as the spiritual rights of the parishoners - it possesses the temporal right as a procureur or administrateur - Ct Denat. vo Fab. Loisel Govt. des Par. - The Fabrique represents the body of the parishoners, as their administrators, & consequently the parish must have the right to their nomination. From the manner in qe parishes are founded, arises this right of nomination of the administrators of the affairs of that parish - a contrary use cannot even destroy this right qe is inherent in the parishoners - it is consistent with the nature of things - The most ancient vestige of right show this right & recognized by the oldest law writers - Chenu. p. 44 - arrêt 1589 - 2 Dec. Parte Paris - where it was held that an appointment of Marguilliers by order of the Bishop was set aside and a general election by the parishoners was ordered - Papon - p. 1083 - p. 317. Repre vo Marguillier. - 1 Dulac. ch. 6. - Lacombe. vo Fabrique sec. 4. No 1. - 3. Mem. Clergé p. 1578. 1519 arrêt 28. Mai 1655. - Id. 1207 - arrêt de 1690 -

which restricts the rights of the parishioners for certain reasons stated, but the principle stands admitted that the right previously existed in all the parishioners. — Ed. p. 479. arrêt du 13 Juillet 1692 — & cd. p. 480 — where it is held that no suit or proceeding can be undertaken by the Fabrique without the authority of a general assembly of the parishioners
3. Mem. de Clugé — 1518. arrêt de 1653.
L'Edit de 1695 regulating the Eccles. Jurisdiction, to be seen in Lacombe — art. 17 — same right is acknowledged, in regard of the accounts of the parish — 3 Mem. de Clugé p. 1463 — an order of the General Council of the Church — Van Espen, cit. Merlin. vo Assemblées de paroisse p. —
Code des Curés where several arrêts & reglements are referred to on the same subject — Durand Maillane — vo Fabrique. p. 2 — Jousse de Parvesses. p. 431 — where mention is made of calling
431 the notables to the assemblies — Memoirs de M. Roux — Merlin. vo Assemblée — 11 Rep. p. 329. Id p. 605. vo Paroisse Jousse. p. 131 — Govt. des paroisses p. 124 — Ferrem. vo Marguillier — Héricourt. H. 4. p. 257. No 35. — Favret. 384. No 2. —
248 & Denizt. vo Marguilliers p. 248. No 49. — No Denizt. 358 — No 2. vo Fabrique de paroisse. — 1 Van Espen. p. 31. —
Refers to arrêt rendered for the Country — the arrêt 2. Edit. p. 139 the arrêt here does not determine any thing positively on this point, but is invoked by the other party, but not in their favor —
2d as to the presidency of the Curé, it is generally held in all the parishes that the Marguillier in charge should preside, N. Denz. p. 363. No 4 vo Fab. des Parvesses
1. Code des p. 131. 132. — 3 Mem. de Clugé p. 481. No 9 — gives the presidency to the Marguillier in charge —

Mr. Peltier for the Defdt. There is no such parish as that in question, it was established only canonically in 1832 — Apart existed it was only canonically, & there could be no appointt. of Civil Administrators to manage its property — By Act. 1. Wm. 4. ch. 51 — it would seem that the establishment of parishes was a matter not well

settled

settled — The formalities to erect a parish must be observed.
N. Duz. vo Erection de Benefice — Rep. vo Erection vo 63. 4
Durand. p. 201. 203. vo Paroisse — The parish if it existed,
it was only an Ecclesiastical parish in wh the Ecc. authority
only could be admitted — But admitting it to be a parish
the notables have no right to assist at such elections — The
property of Fab. is purely ecclesiastical. Domat Lv. 1. p. 14
Cabassus. lv. 2. ch. 25. Loisse p. 101 — Durand de Maillane
Biens d'Eglise — N. Denis Rep. vo Biens 359. 1re Col.
The destination of the property establishes its nature — & be
being for the support of the Church, it must be ecclesiastical. —
Lacombe. vo Alienation sec. 1 N 10 — Fleury by Boucher d'Argis
1 p. 345. on note, — The Church forms a legal corporation
Domat Reglas de droit ch. 10 — Id lv. 1. tit. 19. sec. 1 — Droit
pub. de l'Usage — Hericourt ch. 4. p. 642 — Durand
vo Constitution — Arret. du Conseil 24 Mai 1766 —
recognizing the Ecclesiastical Curés of the Church only. —
Rousseau Lacombe. vo p. 87. Arret 1 Sept. 1635. 3 Mem.
du Clergé 1499. — Id. p. 1518 — There are several general
Councils, of Trente Narborn. Tours & others, where it has been
held that the Marguilliers are not recognized as
representing the parish, but the Church —
3 Mem. Cl. p. 1474 — where the King recognizes the right
of the Clergy to determine on the property of the Church
Descombe. p. 482 — Id. 572. 12 Mars 1689. where
Id. 474 — where the Clergy interfere in the property of the Church
6 Mem. Cle. —

The biens of the Fabrique being Eccles — the Bishop had
a right to direct its administration — Retour de Quebec —
In Canada Ordre 21 Juin 1724 in regard of property of Church of
Champlain — The object of the Sup. Council of Quebec by the
arret of 1675 seems to recognize the authority of the Church —
The arrets de reglement form law only when enregistered in the
particular limits for wh they are made — and these arrets are
as different as the different parishes for which they were made

147

From 1818 to 1833, it does not appear whether the Notables were called to the assemblies in this parish — but since 1829, the Notables were not called — That the parishioners having remained for 6 years without claiming any right is a presumption they had none —

There must be a prescription of 40 years to set aside any Eccl. authority. Rondonneau. vo Usage —

The Bishops of Quebec have always exercised their authority over the elections of marguilliers, refers to the Ordre. of the first Bishop in the Colony — In 1694. the Bishop gave a Mandement touching the regulation of the affairs of the Fabrique — Decd. of this Court for the parish of Montreal in case of the marguilliers. vo Serres — in 1794 —

The general usage of the Diocese of Quebec for 150 years & in general that the Notables do not assist at the election of Marguilliers — refers to proceedings of H. of A. in 1832 — Van Ergen. as to usage —

Mr Cherrier for reply — was continued till to morrow —

Friday 17th Febry.

Pres.t —

Ch. Justice Reid
Mr Justice Rolland
Mr Justice Gale

No 2716
Ex parte
Archambault
et al —

Mr Pelletier requested further to add —

That admitting the usage in the Parish of Paris was to call the Notables, yet this usage has been dissent in this Country since its establishment — The arrêts de Reglement are not law in this Country — The property of the Fabrique does not belong to the parish, & if the Coffre-fort were destroyed the parish would not

not be bound to restore the deficiency – all the external ornaments & other necessaries of the Culte extérieur are at the expense of the fabrique. – The Arrets of the Parlement de Paris are founded upon different considerations, and do not apply here – That as to the right of the Curé to preside is constant, and founded on the principle that the Curé has this precedency in all ecclesiastical matters, which regard the regulation of the property & matters for the govern[t] of the property of the Church. The Curé keeps the Registers of the Fabrique and enregisters the acts of the meetings of the Church wardens –

That the Bishop or his substitute the official, has an absolute right over the accounts of the Fabrique, & can compel the Marguillier to have these ready by the time of the pastoral visit of the Bishop –

Mr. Cherrier in reply. – The Curé has the chief place at the meeting, and may first give his opinion, but he has no right to collect the opinions of the Assemblée –

As to the objection raised by the Defend[rs] that St Hyacinth is no parish legally constituted, yet this parish has existed in fact for 30 years, and the Fabrique has claimed all its rights in consequence, and their present assertion would only show that the Fabrique has been exercising an illegal authority. It is enough that the Fabrique has existed and acted as such and the objection here made ought not to be made after the acts done and admitted by the Curé as such and by the Fabrique. –

As to the nature of the property of the Fabrique – it is eccles[l] as to its destination, but in other respects it partakes of a temporal nature – Arrêt du Parl[t] de Bretagne – The Bishop or Curé cannot divert the property of the Fabrique to any other purpose than that for w[ch] it was granted, or if they did they would be answerable to the parish – N. Denis[t] V[o] Fabrique – & Rép[se] V[o] Biens d'Eglise – shews the distinctions, & that this property has been subject to division into different parts & for different objects – When a Church is built, the parishioners are required to contribute to the expence of it, and consequently it belongs to them – and

whatever

whatever arises therefrom in the shape of ~~obligations~~ oblations or otherwise although applied to the purposes of public worship, are still under the control of the parish.—

As to the power of the Bishop to regulate all the affairs of the different Fabriques in the different parishes — although they have no right to regulate certain matters in regard of spiritual matters,— but extends not to the rights of the parishioners The acts called acts of Legislative authority were never attended wt the formality required, even of publication to render them binding — All these acts are subject to the Control of the Civil Courts and authorities, & cannot be considered as possessing any legislative authority.— Journ sur l'Edit 1695 the ordonnances cannot controul any Reglement for public order Repos vo Synod — N. Denis. p. 77- Pericount. p. 286. No 2 Arret du Parl. de Bretagne. Journ. P. de Bretagne p. 74.—

The Retail de Quebec cannot have more authority than the ordonnances of the Bishop—

Refers to some of the proceedings of the Fabriques of St H— to shew that they are in many respects imperfect. but yet shew that there was a time when the Notables were called to the Assemblées of the Fabrique, and this considered as a general right in the parish.—

As to the Ordonn. of Dechenaux, Intendant. for the parish of Montreal — does not go to exclude the notables from the right here claimed — nor was Ordr ever followed, as the ~~Ordonn~~ notables still continued to attend the assemblés of the Fabrique — as this Ordr being made for a particular parish cannot have a general effect—

As to the usage of the Diocese, it is not before the Court— the proceedings had before the House of Assembly, they tend to determine nothing precisely—

There can be no prescription as the rights of the parishioners in this matter — of 40 years or of any number of years — Repos Merlin. vo Droit Facultatif—

The right of the Bishop over the reddition des Comptes does not exclude to other matters, not specially recognized —

p. 258. Hericourt – In the absence of the Bishop the act may be rendered before the habitans of the parish. – and if a marguillier refused to render act the Bishop could not compel him, recourse must be had to the Civil authority.
p. 1552. 3e Mem. du Clergé – Ferret – Resp. v° Fabrique –

Marconnage
&
Duverrage

Mr Bleury for Pltff moves that Defendr be restrained from examining more than 6 wits – to a fait in his defence unless upon payt. of 6/8 for each wit –

Mr. Cherrier – for Defr –

The King
vs
McKillop et al

on motion on behalf of the prosecutor for a day for proof to controvert the allegations contained in the answers of the Defendrs – in their answers to the Interrogatories proposed to them in this Cause. –

Mr – Buchanan for Defendr – objects to the motion as irregular in point of form, and as a proceeding contrary to law –

No. 42
Pelton
vs
Dewittod

action on complaint & Reintegrande –

Mr Hart for Defendr – The action is without evidence to support it – The Defendrs are the proprietors of the lot of land in question, and were besides in possession

Mr Boston for pltff contends that the evidence is sufficient to maintain the action. –

No. 10
Belsland
vs
Robertson

action for work & labor as Carpenter – Report of arbitrators

Mr Taylor for Defendr The Pltff abandoned his work in an unfinished state – & the demand is reduced to a very small sum –

No. 1288.

Happle vs Gravis & als and Stanley mis en Cause —

On rule to shew cause why there should not be a folle-enchere of the lands purchased by the Defendant in his wife's name —

Mr Greece for the mis en Cause, states that he did not purchase in his own name —

No.

Wheeler vs Walker —

action to obtain an acquittance and discharge of monies paid Defendt on Sale of a lot of land by Defendt to pltff —

Mr Boston for pltff states the case —

Mr Pelletier for the Defendt says, that he has given a receipt &c the ~~Defendt~~ Pltff accepted and he is not bound to give him another — and the Pltff does not offer to give up the receipt he holds already from Defendt and without offering to do so he is not bound to give a second receipt —

Curot vs Guilbault & Guilbault &c

On Law — on opposition filed by Defendt —

Mr Grey for Pltff contends that Defendt Deft. did not appear

Greece vs Cameron

Mr Walker was heard on behalf of Defendt — who was concluded to plead to the action — He now contends that the action ought to be dismissed — The exhibits referred to were never filed in this Cause — The Judgts are incorrectly set forth in the declaration, — The writs of execution are not regularly returned or filed in the Court — The document A. to &c Witnesses refer, was never filed in the Cause — The discription of the lot as described in the original declaration is variant from that described in the copy ~~filed~~ served on the Defendt —

№ 298.

Hall q. t. v Donezani & al

On Information &c — on Law

Mr Fisher for the Defendts — In cases of this kind shortness is requisite — Dewarris on Stat. 742 — Com. Dig Pleader. C. № 76. — and 2. № 4. General demurrer in such case regular Action is founded on Stat. 3 & 4 Wm 4. ch. 59. Sec. 7. — By st Tea is prohibited from any other place than from Gt. B. &c — but under this declaration it is possible the tea might have been imported from some B. Possessn besides the Br. Col. in America — according to the Stat. — And by 66th Sec. of same Stat — it is said that the action shall be brot by some Superior Officer and the Court will not take notice of the Provs as such Superior Officer — It is said Defendts are partners & had forfeited — but not said they had each, or separately forfeited the sum ~~in~~ or penalty in question — Altho' partners, they cannot be partners civilly in delicto. —

Mr Solr Genl for Provs — The first obj. might be right, if there were only one Stat. on this subject — but there is also the Stat. 3 & 4. Wm 4. ch. 101 — and the above Stat. refers to this latter Statute — The Collector is a principal officer in the eye of the law — This is not an act of delict in wh the Defendts could not act in partnership

Cringan v Rivard & Emery opt

On opposition afin de conserver —

Mr Mondelet states the demand to consist in the arrears of rents & pension viagere. —

Mr Taylor for pltff, the Oppost was the only person in possession of the lot of land in question at the time when these arrears became due, and cannot have this enjoyment & the rents & pension also —

No 32.

Archambault & Labelle — Roi. Inter's
Wm Taylor T. S. Inter's
and No 34.
Joseph Roi & J. Labelle — Wm Taylor T. S.

On merits of the Saisie - arrt & Intervention -

Mr Dumas for Mr Roi — The T. S. has given in his deb. & states that he owes nothing to Labelle and on this the Defend. pleads that as T. S. owes nothing to Labelle the Saisie should be set aside But it is evident that he does owe to Defend. as the interest he is bound to pay to the wife of the Def. being Community property, necessarily belongs to the Defendant as her husband. —

Mr. Lafontaine for the Defend. The Saisie No 32 — is vexatious, as the writ the T. S. is called to answer what monies he has en hands belonging to the woman and not to the husband, the Defend. The woman could never contract a debt by her action en Def. so as to bind the Community - but the Saisie is irregular as to the decl. to be made by T. S. — This Contestation ought to have been with the T. S. & not between Pltff & Defr as the T. S. is interested to shew he owes nothing — But it appears that this money belongs to the Mino Children — the woman had only 1/4 of this land but as Commune she was bound to pay the debts of the Community, and therefore the money here attached belongs to the Minors. —

Beaupré & Bedard — Bédard opt

On opposition afin d'annuller —

Mr. Bruneau for Opt. The Saisie was premature as there was an agreement of Pltff to give a delay to Defend. & ask out in his Confession of Judgt before issuing out Execution. —

№ 2441.—

Bruneau
&
Gagnon ux
&
Bourcherville
opt

On oppos. afsd de conserver

Mr De Bourcherville for Oppt. Since he became the purchaser of the property, he has discovered there are several Dowers on the Land & claims the right to retain the money or to obtain security to be indemnified of these dowers.—

Mr Bruneau for Pltff. all the dowagers here being of age and consented to the sale, this is sufficient to ratify the sale — as to one of the dowers the money may remain in the hands of the Dpt.—

Mr De Bourcherville for the Oppt. The dowagers cannot renounce to a right not yet open to them.—

№ 2464 on

Beaubien
&
Poirier
&
Et contra

In three causes united — on Report of Experts —

Mr Bleury for Pltff, asks for Judgt. on his demand considering the Report of the Experts only as evidence in the Cause—

Mr Mondelet for Defendr. That although the Experts have not allowed to the Defendr. all that he has expended, yet he considers the Court must adopt it as a rule of decision in the Cause, and that the expence of the Expertise be paid by the parties—

Mr Bleury in answer, contends that notwithstanding the Report of Experts the pltff is entitled to the amount of the rent by him demanded — as by the lease the Defdr. took the house as it was — That the repairs made by the Defdr as unforeseen repairs ought not to be allowed, because they cannot be considered as being unforeseen — but such as fell within the allowance of £150 — allowed to be expended for necessary repairs —

№ 2362
Leishman
vs
Sharpe —

action for goods sold —

McCord for Plff. Defendt has been examd. on fact & articles, and has acknowledged himself to be indebted in a sum of £17 — for qt he asks Judt

Mr Sweeny. the Plff cannot recover on this demand for a note of hand drawn by the parties, may be in the hands of a third party —

№ 36
Rolland
vs
White —

action on a lease — & on a Judt —

Mr Mondelet for Plff applies for an Expertise to ascertain whether the premises in question were in the same state as the Defendt left them as when he took possession of them — The Defendt has answered only to a part of the demand Viz as to the damages —

Mr Doris ath. for Defendt opposes the motion — That no person appears on the part of the Plff to receive the effects on 1 July — & on consequence Defendt remanded in possession with Augt —

Mr Mondelet — The Defendt was bound to make an Inventory, this he has not done — we ask that the Plff may do so —

№ 1280
Paul
vs
Pothier
&
Desrivieres
Garnt —

Submitted —

№ 1149
Handyside
vs
Cameron
&
Gugy T. S

On Saisie — arrêt en Judt —

Mr T. J. Day. the only question as to regularity of

Distrt

Saturday 18th. February.

Pres.t

Chief Justice Reid.
Mr Justice Pryse.
Mr Justice Rutland.
Mr Justice Gale.

Kirtland vs Carleton — On Depend.rs mo. to declare the presumption of the Pltff's cause & that it be dismissed — Mr Nye, says he ought to have had notice of the motion —

Kane vs Brunean — mo. of Defd.rs to dismiss — from want of proceedings in 12 terms

McVicar vs Davies — moves to discharge the Inscription of the Cause for this day as contrary to the practice of the Court —

Anderson vs Boucheau — Mr Gugy on behalf of the Sheriff moves to have act of the Court that he acknowledges the signature to the return on the writ is his hand writing —

McKinnon vs Boyd — on Pltffs mo. for a Com. Roy.e to U. Canada — Driscoll for Defd.rs The heirs of deceased parties must be in the Cause — already a Com. has issued — no affidavit of the necessity of this Com. —

Ex parte Beaudry — On mo. for a rule on the Notary. Bedard —

Saxton et al vs Barnard et al Devisees of &c. — on mo. of Opposant that the amt. of his claim being provided for, be paid over to him, leaving enough in the hands of the Sheriff enough to pay claims of other contending parties — Mr Scott for Pltff objects —

№ 533. Kemp vs Bowker —	Judgt for Pltff
№ 1281 Nichols vs Jones. — & Garant	Judgt on pleas —
№ 407. Fabrique de Varennes vs De Martigny	Action dismissed
№ 814. Rivé vs Longtin	action dismissed, from the informality of the Pltff's marriage Contract —
№ 204 & № 205. Fox & al' vs Smith & al'. —	Judgt for Pltff's w. right of preference only on the two Casks № 10 & № 16 — which had not been opened —
№ 2561. Donegani vs Donegani & al' —	Action dismissed —
№ 1186 Hamilton vs Merritt	action dismissed —

№ 144. Lacombe vs Porteous & Moffat & al Gar[ts]	action dismissed
№ 1162 Fraser. & vs Lindsay. & & Fraser par rep[n] d'Instane	Rule discharged
№ 1449. St Germain & vs Doriors. & & Forelier. Gar[t]	Plea of Exception of Garant dismissed
№ 2143. McKay. vs Scriver	Judg[t] for £3. 7. 6
№ 2389 Foley. & vs Kurszeyn	Judg[t] for Pltff.
№ 824 Morin & ux[r] v Menard	Judg[t] for Pltff
№ 1699. Bougret & Dufort vs Quesnel	Judg[t] for Pltff
№ 2084 Cuvillier vs Dufaux	Judg[t] for Pltff

Monday 20th Febry 1837.

Pres.
The Four Judges.

No 1196.
Cuvillier & al
v.
Torrance & al

Action dismissed – dissts Mr Justice Pyke –

No 531.
Begly & al. –
v.
Boudreau /
Tiers Saisis

Defend. mo. rejected by the majority of the Court Mr Justice Rolland dissented from the opinion of the Court on two points. 1st the regularity of the P.V. of the swearing officer – & 2d That no requete, petition, or declaration was presented to the Judge praying for his fiat for granting the writ of Saisie Arret. – I dissented from the opinion of the Court, as to the legality of the writ, it having been sued out for £3000 – when the debt sworn to was only £1800. –

No 628.
Bdache. –
v.
Kauntz
& Garant –

Judgt confirming Report of Experts. –

Rollands
v.
Bousquet
& Hre Sheriffs mis
en Cause –

Rule obtained by Plff discharged

No 673.
Grant. –
v.
Lapensée

It was held by the Court – dissts Rolland – that a plea of mis nomer, or of wrong addition given to the party was not an exception à la forme, & although affecting the regularity of the proceedings, yet according to the settled practice of the Court, might be pleaded with a plea to the merits. –

№ 645.
Chapman v. Watson. — Same point decided as in the last case. —

O'Callaghan. v. Doyle. — The Court admitted the witness to produce & give in evidence the printed Newspapers in which publications were said to be contained touching the character of the — Defendt — as such evidence could go only in mitigation of damages, and as the witness had already been allowed to go into the general tenor of the contents of those newspapers from his memory & recollection, in ql — case the Court considered that the newspapers themselves would be the better evidence.

№ 1260. —
St. Ours v. St. Amour — Judgt — for Pltff —

№ 1528
Themens v. Meunier — Ordered that Defendt — appear & answer on the Serment Judiciaire —

№ 1175.
Guilbaut v. Beaudry — Judgt for Pltff

№ 1288.
Happle v. Graves & Stanley — Rule for the folle enchere absolute —

№ 2525.
Wheeler v. Walker — Judgt — for Pltff

Curot v. Guilbaut & Guilbaut opt — Opposition dismissed —

N°2444.

Bruneau
Gagnon
Boucherville op.

Opposition dismissed —

April Term 1837.

Saturday 1st April.

Pres.t

Ch. Justice Reid
Mr. Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Barbrand v Dennis — on mo. for nomination of a Trois-experts — Mr. Cherrier for Defend.r considers that an Architect should be named.

Monjeau v Lozelle. Normandin & Lozelle mis en Cause — Mr. for contestants opp. Pltff's mo. for Distribution as not having paid the amount of his adjudication.

Bowker v Scott — mo. to re-open Enquete — over to Monday

Montezambert v Hart — Pltff. mo. to reject Defend.rs opposition dated 11th. Inst. & Hand Rps.
Hart for Defr. same plea as case of Mc Nider v Delaney — This a plea to the merits — general issue —

Shedden v Braithwaite — on Defrs mo. to discharge Cause from inscription for Rps.
Mr. Morgan for Pltff — action on promy notes — subsequent agreement. Mr. Cushing to accept service on Mr.

Hunt v Mc Ross — Pltffs mo. to amend. — states circumstances of the case —

Gugy
vs
Rolland

Mr Gugy moved that cause be called.-
Objected by Mr Mondelet stated that service of proceedings had been made on him as att'y of the Defendr he had agreed to accept the service conditionally, but this had not been accepted
Motion granted -

Putnam
vs
Gilbert

Mr Driscoll for Plff moves to be permitted to withdraw inclusion in rebuttal of Defts Exhibit - altho' regular docd - as being a right by[illegible] he has not renounced to his right in this respect -
Mr Day for Defendr submits the Case under the right he has acquired.

Roseville
vs
Jones
&
Rolland Intervr

Motion on the part of the Sheriff that the Intervening party proceed in his Intervention

Mr. Mondelet for Jos. Lalonde an opposant in the Cause as he has taken a rule on Wm Morgan, to shew cause why Wm should not be a party in the Cause -

No ~~567~~ 97
Ex parte
On Requete of
Jos. Rousseau for
Certiorari
Joseph Gagnon
Dal

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On motion for Certiorari

Mr. Chas Mondelet for the Magistrates - objects that the affidavit on part of the applicant is informal - That there has been no personal signification made to the Justices, but only to one of the Three - The affidavit of the party filed 1st Feby ~~[illegible]~~ on a similar application & was rejected on 7th Feby - is here produced, & cannot be allowed to be produced here - The Security given is also subject to the same difficulty - & is not applicable to this demand -

Mr. Blenny for the Petrs - The notice is sufficient - the law does not require personal service - The affidavit & Security for costs stand regularly before the Court -

№ 2657.
Ex parte
On Petition of
Lo. Todorini Lat
for Certiorari

On application for a certiorari —
Mr Chas Mondelet — objects to the regularity of the proceedings — there is no affidavit — no service attested by the oath of the officer — nor six days notice given to the magistrate —

Monday 3d April. —

Pres.

Ch. Justice Reid.
Mr Justice Pyke
Mr Justice Rolland. —

№ 1095
Frost dat
vs
Donnellan

On Pltffs mo. to reject Defendt exception as containing no reasons in effect the same as formerly rejected —

Bowker
vs
Scott —

On ~~Pltffs~~ mo to reopen enquete to produce certain evidence to rebut that adduced by ~~Defendt~~ Pltff. —

Mr. Bleury for Pltff opposes the application — the Enquete closed between 6th & 7th Febry last — the Cause was heard last Term the application is too late — some of the Wits proposed to be exd have already been exd in the Cause —

Guilbault
vs
Beaupré

Mr Hart moves for delay to plead, & to set aside the Inscription for enquete ex parte —
Mr Bleury for Pltff objects. —

N° 878
McVicar
vs
Dawes —

On merits on supplementary Report of the Experts. —

Mr Sweeny for Pltff. moves for homologn of the Report —

Mr Bolton for Defendr — objects to the Report, that he had no notice of the meeting & proceedings of the Experts — moves to reject the Report. —

Mr Sweeny objects to any affidavits being produced in support of the motion to reject the report having had no communication of such affidavits. — No affidavits can be received after the facts stated in the Report. Repns re Experts p. 224. —

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N° 319
Descelles
vs
Willett

Action for house-rent & Saisie Gagerie — ap[pointe]d

Mr Cartier for Pltff — the Saisie is par droit de Suite — the action is for damages occasioned to pltffs house by Defendr — the

N° 2313
Cartier fils
vs
Frase Paquette

Action on transport of Obligation —

Mr Hubert for Defendr The Pltff had no right to make a transport of the oblign as it was a debt due to the Succn of the late Jacques Cartier — The transport could not be made by him more as Exr as the Exr holds for the benefit of the heirs or Legatees — Mr Cartier cites N° 506. 7 — 8 — he who has the right to receive payt has a right to make the transport — p. 105 Pothier on the Conventions — Poth. Oblgn. N° 602 — If there was no debt, the debtor cd be bound to pay on her oblign —

5 Tellier.

Tuesday 4th. April

Pres.

Ch. Justice Reid
Mr Justice Pyke
~~Mr Justice Bolland~~
Mr Justice Gale.

Mack
v.
Flaherty

on Plffs. mo. to reject the Defendt. plea of exception as to the addition of the Defendt as butcher —
Mr Rossiter for Defendt. this is a plea to the merits. —

Dennis ad
v.
Pre. Poissant

On Evocation from the Commissioners Court —
Mr Sol. Genl. The evocation is made on the principle that the demand here future rights, as regarding the support of a Church to be established in a new parish. —
Mr Guy for the plff. The Court cannot say from what is stated on the face of the demand that the rights in future can be bound — there may be an act or acknowledgement of the party binding him to pay the debt. — This by the ordre of 1791 is merely a personal obligation which does not bind the future rights — The individual is bound only while he resides in the parish, nor can the Court now determine before the act under which the parties are bound shall have appeared in evidence — There is a distinction between Capitation reelle or foncier, and the Capitation personelle — Domat. v. Taille. —

No 569
Guilbault
v.
Beaupré
&
Thos. Bedard

On rule on Defendt to shew cause why a contrainte should not be granted vs Bedard for having refused to comply with an order of the Judge to deliver a copy of an act to the Defendt —

Mr

Mr Hart for Defendt. The affidavit of the Defendt stands uncontroverted, stating the refusal of the Defendt. The paper is necessary for Defendts defence. Notary as a public officer is bound to give a copy to the party interested. Proc. Civile. p. 45.

Mr Bleury for Mr Bedard. In answer to the two rules, that the Defts in Cause have not in his possession the minute of the act in question. The affidavit refers to an act passed in the year 1836. whereas the rule served on the Defendt refers to an act on 1826.

That had the notary refused to deliver an act, on the authority of a Judge, it is not a Mepris de Cour, as the Court never made such an order.

Langlois Dorion & Nolan. The notary discharged on his affirming that he has not the act in question

Mr Hart in reply. Defendt not bound to take notice of motion of Defendt of his declaration — but declaration is not sufficient, does not say he never made such an act, but merely that he could not find it.

That the rule and the affidavit refers to the year 1836.

No 968. Phaneuf vs Barbeau

} On obligation mutis.

Mr Badgley. Oblgn to be paid only on the final partition of the Estate of Brunet. There is a pervch appeal between Brunet & Defendt. That he shall pay over this oblgn to Brunet on act of Brunets claim as the Succr of Brunet. but there is no specifn to assignt of this oblgn to Brunet. The parties here must be considered as mutual Creditors & debtors & the act of partage must be considered as a discharge. But

Then

there has been a novation here by the new act passed between themselves—

Mr Herbert for Plff— the Plff here is the legal transport of the obligor &c. is specifically described in the act of partage— This debt has not been paid, on the contrary, the balance now demanded appears to be due by Defend from the terms of the act of partage to which Defend was a party—

There is no novation here— it is the same debt arising out of the original transaction— Poth. p. 284. Tr. Obl. — *

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No 1202
Grivois
vs
Fellows

On Report of Experts—

Mr Chas Mondelet for Plff— the Report is not very formal, but sufficient, as they have determined all the points referred to them—

Mr. Currier for Defend— the report here is a mere chiffon de papier, without form or substance — but the Experts have not comprehended the objects referred to them — and have proceeded to decide upon points not submitted to them. the opinion of the Experts here is in contradiction with the opinion of other Experts & of several witnesses, & shews that they have not attended sufficiently to the objects referred to them —

Wednesday 5th April 1837.

Pres.
Ch. Justice Reid
Mr Justice Pyke.
Mr Justice Gale. —

De Rouville
Jones —
& Morgan mis en cause
& Rolland Intervs
Jos. & Lalanne
— Oppt

Mr Guy for Morgan moves to appear for hearing & for delay to call in his Garant —
Mr Mondelet for the opposant Lalanne, says that he is a stranger to the proceedings between the adjudicataire & the other parties in the Cause — The oppost is entitled to his rule as the adjudicataire and the Court cannot take notice of any agreement between the adjudicataire & third persons. —

Delvechio
& Kearsley Sal

Mr Cherrier for Defendt — for delay to answer to the new account produced & filed by the Praticiens
Mr. Mondelet for Plff — How can be no debats to the report of the Praticiens — & all the party can ask for is a delay to examine the report. —

Jarret & Pscaud
Defendrs
& Oppt —

On Plffs admission of the opposition — but without costs
Mr Guy for oppost — moves to reject admission & to forclose the Plff —

Guy
& McMillan

On motion of Mr Guy to reject plea or exception à la forme, as being in the French language — as the objection should be made in writing —

Mr Conghlan & on motion —

Mr Nye for Defendt — an exception is the proper course

Thursday 6th April.—

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Hon. L. Guy
v
McMillan

Pltff's motion granted, as the Court held that the plea of exception fine pleaded, and said matter to be brought forward by motion according to the rules of Practice.—

Ex parte— on application of Beaupré
Thr Bedard

Inst— on the Rules obtained, that Mr Bedard make his affirmation on oath touching the act in question avant faire droit.— The Rule in the other case disch.—

№2068
Try
Whitfield

on the declaration produced & filed by the Defendr in conformity with the Interlocutory order of the Court—

Mr. Scott for Pltff— This decln is in contradiction with the evidence & with the Defendrs own plea—

Mr. Stanley for the Defendr— contends that there is nothing to controvert the declaration of the Defendr either in the evidence, or in the plea.—

№1991
Ashton
v
Privat

Defendr appr. & was heard— Pltff did not appear

№1149
Hanoysideal
v
Cameron
&
Grigg. T. S

On Saisie-arret on Judgt—
Mr Day for Plff, a plea of payt has been set up—
objects to the testimony of Atkinson—

Mr I. Day for Defendt— contends the proof has been made of payt sufficient to extinguish the demande—

№1048
Cottrell
v
Doherty

On merits ex parte—
Mr Hart for Defendt— moves to set aside the Inscription, as no regular notice of proceedings has been served on defts attorneis—
Mr Rossiter for Plff has served notice suffte—

№1577
Devone
v
Devone
&
Conlon

On Report of Experts—
The Report to be homologated— question submitted as to the Costs—

№1325.
Hamilton
v
Porteous

On Law—
Action for Lods & Ventes—

Mr Griffin for the Defendt— Contends that Defendt is not liable to pay Lods & Ventes as being the child of the former proprietor of the property— The Sale was made by the Sheriff on Execution—

3 Guyot. 261—
Fonmain—
№248. 4

Cites 26e. art. Coust. & № 32 p. 539.— art № 5—
1 Lepage de Lapalante p. 193.—
p. 219— on art. 2e cas of licitation Renony Coheirs ne Lods—
Id. p. 1222. do— p. 1232.— № 24—

3 Dosp: p. 86.— Lods not due on adjudication among Coheirs—
1. Laplanche p. 251. 3. d 4 — 1. Guyard. arrets. p. 716— where a stranger purchased share of a Coheir— but adjudged agt. the purchaser—
1. Guyot. p. 11.— same rule applies to Coproprietors as to Coheirs — & p. 13—
1 Arrets de Perrier. p 370.— same principle.—
Malabaye dela Motte. p. 223.— where a heritier beneficiaire becomes purchaser by decret— no Lods
1. Arrêts de Lamoignon. p. 76. No. 5.— C. 7.—
Lacombe. v. Lods— partage— & Heritier
3 Desp. p. 90— no Lods on a transaction among Co-heirs —
Lacombe vo. Lods. transaction—
3 Henrié. Matieres feodeaux. p. 44. No. 10—
No Lods due on ~~Desistement~~ Delassement — Lamoignon p. 78. No. 18
where the party, who makes the Delassement becomes purchaser.—
Lacombe. vo Lods. heritier. — 422.—
1 Laplanche. p. 194— where the property is seized & sold by Decret— no Lods due — d. d.— in case of heritier beneficiaire.—
1. Lamoignon p. 78. No 30— where a decret Volontaire becomes a decret forcé no Lods due. also No. 15.
There is no change of Vassal — Bontaric. p. 103— no Lods there being only a change of title — & p. 107.— even where a heritier beneficiaire renounces, & becomes purchaser— no lods. p. 108.—
2 Franman p. 104— No 575.— where sale made to one of the heirs & the price divided among the Creditors.—
1 Franman No 248. p. 223. on Decret forcé— also No. 249.—
Mr. Mondelet for Pltff— Here there is a change of title, & Vassal— because the heir here did not purchase what belonged to her before— Here the Creditors are guarants & not the heirs to make up any deficiency— Defdt. not heir, but Legatee and as such she is not responsible, as not representing the deceased proprietor — The reasoning here that there is no

change

change of proprietor, does not apply — here is a change of proprietor

Poth. Inst. p. 150 — when a new title is given to the heir the lods are due,

1. Henrys. p. 854 — 44e question

2. Journal Palais. p 564. — & p. 567. — & p. 569. —

1. Arrets Augeard. p. 718. 2e Col.

2. Dec. des Arrets. p 520. No 105. Vo Droit — Droit Seigneurie, Cries Id. Vo Lods — p. 129. No 17. —

On 78e Cut. Cout. refered to by Ferrier — a contrary arret is reported to. — but it is an arret subsequent to the year 1663 —

The Defendt here did not purchase as heir, — but as a private purchaser. —

Griffin in reply — As to the Seigneur it makes no difference whether the sale is by Decret or licitation — The arret cited by Pluff the arret of 1696. from Gr. Comr of Ferrier is relied on by Defendt —

No 1932
Grey
vs
Berthelet
Dufort Intervs

Action en separation de biens —

On Law on the right of Intervention of Dufort.

Mr Grey for Pluff. The conclusions of the Intervention here cannot be granted — Nor can the Creditor prevent the Pluff to obtain her separation if the proof be sufficient —

2 Bigeau p. 180 —

Mr Pickle for Interv's parts — There is enough to entitle the Interv's party to intervene to prevent collusion between the Pluff & Defendt —

—

No 256.
Sarret dit Beaucyard
vs
Chabotte

Action of damages for cutting down wood on the land of the Pluff

Mr Greene for Pluff. The Defendt by his title is entitled to a coupe de bois on Pluff's land, but that extends only to the old

old wood, whereas the Defendt has cut down young wood, and of a subsequent growth to that compte to wh the Defendt is entitled. —

Mr. Chas Mondelet for Defendt The question here is whether the Defendt has cut down young trees or not old ones — The Plff has not establish by evidence that the Defr ever cut any young trees, the testimony of the witnesses in this respect is by no means clear nor satisfactory. — It appears that it was one Gullet, Lessee of Brosseau who is a wkmn for the Plff, who were the persons who cut down the trees. —

Mr. Grece for Plff in reply — rejs

No. 1611
Bowker
vs
Scott.
& Contra

Action on notes & for articles furnished as per acct stated. —
Mr Blumfor Plff rejs to a settlement of acct between the parties. —

Mr Driscoll for Defendt — The Plff has given credit to Defr for £36. 2. 1½ — but the only evidence of the acct is the admission of Defendt & £2. 19. 2 must be deducted — The exh. No. 2 has been mis described, as it is stated to be payable to Plff only, whereas note is payable to plff or bearer — The agreement to furnish wood as stipulated in the exh. of Plff, has been fulfilled, by the delivery of the wood, the subsequent loss could not fall on Defendt after such delivery had been made — besides this exhibit was given in error, on a supposition that he was liable for the timber which had been thus lost. — Agrees to deduct from the Incidental demand the sum for which the Plff has given credit, being £36. 2. 1½ —

Moves to reject the testimony of Chas Short, & Jno Bowker Jr —

Mr Blumg in answer —

Nº 1174
Turgeon
Arnoldi

Action for £125. for one years house-rent –

Mr Turgeon for Plff. the Defdt has pleaded that the house was not finished & not worth the rent –

Mr Fisher for the Defendt – The Plff leased the house in an unfinished state, & Defendt was to have possession when completed – The house was not finished in a way to merit payt of £125 for a rent, & in this respect the Jury ought not to award the Defdt – The witnesses on consideration that £100 to £112 wd be sufficient rent for such a house – The Plff has even obtd damages at the Court for not having finished the house in a sufficient manner –

Mr Turgeon – no evidence can be admitted to prove the quantum of rent, otherwise than as specified in the lease – The Plff has obtd a Judt against Defendt heretofore for a years rent by default – agrees to deduct the rent for one month in 1834 from the Calends at which Defdt had obtained possn –

Friday 7th April.

Prest.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Flaherty
v
Cameron

Mr. Mondelet's mo. to reject an exception pro. as being made after a plea to the merits —
1 Pigeau 298 — 5 Ordre 1667 art. 5. tit. 5 —
Mr. Griffin for Defdt — moves that Pltff be foreclosed from filing any answer to his plea, filed 2d inst — The Defendts plea is correct, and the exception pleaded is may be pleaded viz. the other plea

Ex parte
Jos. Bell
&
Chapman opt

On Petition for ratification of title. —
Mr Foster for Petr — moves to reject Oppn of Chapman from what appears on the face of it. there is no right to maintain it —
Mo. rejected — party must plead to it. —

No 1505.
Drouin
vs
Labrosse

On Report of Experts —
Mr. Cherrier for Pltff considers that the Court ought to consider the Report of the two Experts as sufficient to entitle the Pltff to his Judt — as the Experts are unable to give any further explanation of the report —

No 1687.
DeRouville.
Jones
&
Morgan mis en cause
&
DeRouville Intervs —
&
Lalanne opt

On hearing of motion of Mr Mondelet for the Opptr for a folle enchere — Demande Judgt. —
No person appeared on behalf of Mr Morgan —

Saturday 8th April.—

Pres.t

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.—

No. 123.
Fabre
Wheeler & al

On rule on Defendts Cuvillier to shew Cause why an attachment should not issue against them for having opposed the execution of the writ of Saisie Gagerie sued out in this Cause.—

Mr. Peltier for the Defendts appears, and moves to be permitted to answer in writing.— But this proceeding being of a Criminal nature and touching the rights of the parties to the Suit the Court refuses the application — Over to 12h.—

No 350
Guy
McMillan

Mr Guy for Plff demands Judgt—
The Defendt did not appear

No 415
Adams
Annesley —

On Law—
Mr Rossiter for Defendts— This is a contract made by a married woman without the authority of the husband & is null—. As to the husband, the

Mr I. I. Day. The first count is for lease of a house the second for use & occupation of the house — There is no special agreement alledged to have been entered into in writing—

No 1813
Ermatinger
&
Mead—

On award of Arbitrators.
action for house Rent.—

Mr

Mr Scott for Pltff, demands homologn of the award.
Mr I. I. Day, does not object to the sum awarded, but to irregular form in which the award is drawn up.

Monday 10th April.
Tuesday 11th " } Enquête days.

Wednesday 12th April.

Pres.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Germain here
Germain left }

On Defendrs mo. to be allowed to amend his plea by changing the date of the quittance Renouvellement
Mr Brunean for Defendr states that Pltff has admitted the identity of the act by his replication
Mr Bleury for Pltff agrees to motion on Defendrs paying all the costs — has not admitted the identity of the act —

Ferguson
Ware — }

on Pltff's mo. to be permitted to fyle a certain act in the Cause — being an act of Lease between the parties. —
Mr Hart for Defendr objects to the motion — as it is thereby intended to supply the defect of evidence in the Cause — The Enquête has been closed — & if new evidence be now admitted it must be on payt. of Costs. —

Corbeil } Mr Lafontaine makes

Drolet & Beaudry } action by defendt — Lafontaine for Plff. considers sufficient reason [illegible] to entitle him to Costs —

The King & Mathieson } On motion of applicant to quash the Judgt — of the Justices of the Peace

6 Wm 4. c 56

Mr Perrault for applicant — mo. to set aside the proceedings of a Proces Verbal touching the reparation of labor to be done about Fences & Ditches — The Law req. that certain publication & notices should be given at the Church door. — The notice was given for the 18th. October, but it does not appear that any Court was held on that day — the court was held on 19th Nov. The Justices do not know the Reparation but the P. V. of the Experts — But the Justices had no right to take cognizance of this Report by the clause 36 — where labor is great there is a reparation to be made in money — by Sec. 47 — but this not done here, but certain alterations have been made as [illegible] P. Rolland & some works ordered to be done — Refers to 50th. clause of the act — of. October where there shall be a nomination of Experts — of. only where a P. V. is to be made, but not in case of a Reparation. —

No 292.
Coyteux & Robitaille & Tison. Can' Ltd' — } On oppositions. — pts. are admitted except as to that made by Plff for his costs —

1685
№ ~~965~~
Mount
to
Dewitt -

On Report of Experts -
objected that the Experts operated after their powers
was expired -

№ 1522
Delvecchio
v
Thaintz

Action to reform an account rendered by Defdt
Mr. Mondelet for Plff The Practicians have
pointed out many errors, & he asks for hom. of their
report. -

Mr. Charrier for Defendt There are errors in the
Report of the Practicians -
1. a sum of £6.5 - Practicians not justified in their omission of £27. for ~~costs~~ interest pd. by Mr Papineau
same for £21 - for interest pd. by Mr Dewitton -

436 Tutors entitled to be pd. for their trouble. Merlé p. 436 -
Favard Jr. Tutelle. p. 99. - refers to an Arrêt de Bardet.

Mr. Mondelet for Plff - considers that the Practicians
have terminated the contest between the parties in such
way as creates no difficulty, and further content or
enquiry becomes unnecessary. -
The principle of paying a Tutor cannot be here admitted
from the latter duty to be performed. -

№ 123.
Fabre
to
Wheeler et al

On rule on Mr Cuvillier to shew cause why an
attachment should not issue agt him for having
opposed the execution of the writ of Saisie gagerie
in this Cause -

Mr. Perrault for ~~Mr Cuvillier~~ the Plff - the rule founded
on the principle that Mr Cuvillier had admitted to have the
effects in question in his possession, but would not point
them out. 1 Pigeau 604 - The question is the upon f-

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a writ – Mr C. was a Defendr in the Cause, should have offered his reasons agt the right to seize, Poth. 204.5 Proc. Civ. – 4 Blackst. 285. –

Mr Pelletier for Mr. Cuvillier – from the conclusions taken by Plff in his declr he demands that in case Defendt refuse to admit the seizure of the effects, they be condemned to pay the amount of the demand – and having adopted the civil remedy he cannot have the criminal course – That the rule ought to have been supported by affidavit

The authorities cited refer to an Exon on Declr – here the Defendr was not bound to point out the effects in question, nor had he the means to know what effects were subject to the previledge of the Plff – he did not know whether these effects had ever been in the house of the Plff

No 964.
Jac. Poirier
Prudhomme
al

on a regular Writ & on Intervention of one Jeremi Prudhomme –

Mr Lafontaine for Jeremi Prudhomme – the Intervening party finds that two of the Plffs had no right in the right & Dower of [illegible] has been allowed them, as they have ratified the alienation made by Davis, who constituted the Dower – The same principle applies to three of the Intervening parties –

Mr Rollin for Defr – The party being called en Garant had the means to defend his right, he knew all the circumstances he now adduces & might have used them in Defence of the action brot him as garant – The acts of Renonciation of the parties to a Succession future are null & the parties cannot be bound thereby Their father & mother were both alive at the time

Poth

Poth. 78. Succ. Rep^{ns} Ren^{n} a Succession future p. 135. — This Ren^{n} ought to have been insinuated Ferrière. v^{o} Insinuation — otherwise it is null. —

Mr Lafontaine. — It would appear by the proceedings that the mother was dead when the Ren^{n} was made, but the Intervening party founds his demand on the Ratification made by these parties —

№ 1845 Patton vs Andrews	action dismissed
№ 607 Ferguson vs Hart. ux	Action dismissed, saving recourse
№ 968. Phaneuf vs Bastien	action dismissed —
№ 701 Vass vs Kurczyn	Judgt
№ 1088 Coiseau vs Dumont	action dismissed
№ 1048 Cotterell vs Doherty	Judgt
№ 2337 Thomas Mead	Judgt £30 — damages —

Thursday 13th. April.—

Pres.
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale

Rossiter
&
Fraser dec'd

on Mr Walkers mo. to proceed ex parte
Mr Meredith for Defendt — delay given during Term
to plead. —

Mr
Jas. Nairne
Wm. M. Smith
&
Lindsay & al opp'ts

On Pff's mo. that the Enquête be declared closed
on the claim of the oppost. as no testimony has
been adduced by them

Mr Ch. Day for oppost. — there is a motion before the
Court by oppost. claiming that the oppositions be admitted
since June last, upon wh. no Judge has yet been rendered —

Wright et al
vs
Harvey —

On motion of Mr Sweeny that Defendt. counsel
produce & file a motion made by the Att'y Genl
discontinuing the Intervention of the Crown —

Mr Sweeny for Pff. states that on 14 Feby 1832. the
mo. was made to discontinue the Intervention by Mr
Buchanan on the part of the Att'y Genl — was made.
and the Cause was then heard on the merits —

Mr Walker heard was stated that the motion
in question was never exhibited to the Court, nor any order
given upon it, as that motion was confided to the discretion
of the advocate for Defendt. —

Bradford
vs
Moore

Mr Days mv. to be allowed to take off default entered agt Defendt & enter appce for him. — The servis was not made to Defdt or any of his family — servis made after sun set —

Mr Walker for Pltff — process was served in Jany last, to one of Defendts family — no allegation that demand is ill founded. —

Turner
vs
Debreuil
&
Archambault
dat — opp.

On motion that the adjudicataire pay the monies in his hands ~~in court~~ over to Pte Cotte. Archambault, as the debt is in hypothèque —

Mr Bruneau for Jac. Archambault, makes a similar application — but if Cath. Archambault gives no such security within a certain time the right be given to the Pt Jac. Archambault —

Mr Moreau for the adjudicataire, contends that there being no security offered. the party be allowed to retain the money in his hands —

Mr Cherrier for 2 of the opposants. —

Directed that Pltff complete his mv. by giving names of securities he offers —

No 326.
Bridge
vs
Phillips

on motion to dismiss for want of proceedings —

No 1727
Mc Nider dat
vs
Boddeley
&
Leveryere, Intervs

On motion of the Interven party to examine Catherine Bilair wife of the Defendt — on the Contest raised on the claim of the Intervt party touching the right of property to the effects sized. —

Mr Hart for Intervs party — the articles claimed belong to Intervs party — the Defendt has no interest in the question unless adverse to the Intervs party — cites case of Donaldson v. Hartley in appeal —

Mr Walker for Pltff — this a particular case — the charge here against the Defendt here is his withdrawal his efforts to defraud pltff

№ 987. —
Archambault
vs
Devos & Jolicoeur
&
Henry Oppts

On oppost. mo. to renew the rule of reference & to name another Expert in place of Mr Deschamps who refuses to act as such

Mr Cherrier for Pltff. states that Mr Deschamps has since agreed to act. —

№ 599.
Lafontaine
vs
Laberge —

Action on promy note of Drawer against endorser

The Pltff. states that the note having been protested the protest was notified to the parties interested. The Drawer makes no plea — the first endorser pleads want of notice — the protest shews regular notice to the endorser but the Notary is produced to shew that the Notary left no notice of protest to the Endorser —

Mr Hart for Defendt. The endorsement here is without consideration — Pltff brings up the Notary, who states he gave no notice to Defendt — the pltff thus impeaches his own evidence

№ 1867.
Monkman
vs
Lawson —

Action for value of certain articles received from the Pltff. by the Defendt —

Mr Bleury for Defendt — contends that pltff has made no proof in the Cause —

No
Jarret
&
Benoit
&
Oppos^t

On Instf of Distribution —
Mr Green for Defend^r The only oppos^t here who has not signed this Instr is Mr Drolet, who has been notified to be heard — Defend^r contends that the claim of Drolet has been satisfied — Drolet seized & caused the sale to be made of all the Defend^r property, which he retained in his possession — Drolet has also refused to answer to the Interrogatories proposed to him by Defd^r

No 943
Roi
&
Chagnon
&
Gueyon o/s^t

On opposition to sale of effets seized
Mr Lafontaine for Pltff contends that oppos^n is not founded — The Defend^r is debtor to Pltff to a large amount — he sold his goods & whole stock to the oppos^t his clerk, during the time the Pltff's action was pending — This act is fraudulent & cannot be maintained — By the evidence in the Cause it appears that Defend^r was bankrupt in 1834 — and this by the Defend^r own acknowledg^t — The sale of the goods in the Store was made in 1836 — a few days before the Inst^t — The sale was private & concealed & done with a view to defraud — The oppos^t has been exam^d on fact & art. — There has been a Saisie-arrêt made in the hands of the oppos^t — in Oct^r 1836, and he declares that he had not then any thing in his hands belong^g to Defd^r — in the ans^r to 11^e & 13 Interr^s — it appears oppt had not paid the Defend^r as he then owed the amount of the notes he had given to the Defend^r to the amount of £600 —

Mr

Mr Walker for the Oppos^{t} The Defend^{t} was not in de confiture at the time of sale in question — The seizure here was made of the goods in the possession of the oppos^{t} but in the same store of had formerly belonged to the Defend^{t} If there was any fraud the Pltff should have brought a special action to set aside the Contract — & not proceed by this indirect manner — The Defts admit cannot say to whom the store belonged at the time of the seizure — The witnesses produced by Oppos^{t} who say that since Oct 1835 they knew the shop to belong to the oppos^{t} — and the business was carried on by him —

Mr Lafontaine for Pltff — refers to the Contradictory accounts given by the Oppost of his manner of carrying on his trade — says he never made any purchases to carry on his business after sale to him by Defend^{t} whereas the contrary appears —

Friday 14th. April.—

Prest.
Ch. Justice Reid.—
~~Mr Justice Pelletier~~ remained in Chambers—
Mr Justice Rolland
Mr Justice Gale.—

Jemmers & Meunier — Party in Court to answer to his serment Judiciaire—

No 127.
Belinge & Moses — Mr Bleury for Pltff. states the question as to the sufficiency of the tender made by the Defendt—

Mr. Lafontaine for Defendt— contends that a valid tender was made before the action— contrary evidence to that of Defendt has been offered by one Martin, but he speaks to what happened subsequent to the tender—

Mr. Bleury for Pltff. The tender made by Defendt— was insisted upon as he wanted to include the augmentations made by Pltff. which were not then in question—

No 855.
Lacoste & Fournier — on law — on defenses en droit don Exceptn—

Mr Cherrier for Defendt— contends that the action cannot be maintained by the pltff in the Capacity in which he acts as a Trustee or Syndic— That the pltff here is the mere procureur of the general concern— altho' even the Defendt has consented thereto—

Mr. Mondelet for Pltff— there is no question of those rights the Defendt wishes to raise— this is a case of bargain & sale between the parties—

2629.
No ~~350~~

Proud
v.
Fuller
&
Costa

action for house rent - & Saisie Gagerie —

Mr Driscoll for Defendt — That when the lease was made there existed a privy in the house, but at that time it created no nuisance in the house, but this has become since an intolerable nuisance — The roof of the house is besides in such a defective state as not to be water tight — of all this the Defendt gave notice to the Pltff, who refused to remedy the inconvenience — The Defendt in consequence of the notice he gave left the house — Some time after this repairs were made, and the house was made habitable — on this Defendt returned to the house, but contends that he should pay no rent during the time he did not occupy the house — ~~Good~~ The Defendt — contends further that he is entitled to the whole of the Cellar, instead of that part which has been partitioned off by the ~~Pltff~~ — and according to the terms of the lease Defendt was entitled to the whole cellar under the house leased —

Mr Scott in reply — The Defendt suffered no unexpected inconvenience from the privy in the house — the Defendt remained quietly in the house up to 5 Oct — when he called on Pltff to make repairs — The Pltff gave notice of the protest he had rec from the Defendt to the proprietor — The Defendt had the right to cause repairs to be made, or in default of their being made to ~~be~~ make them — The damages charged by Defendt — are not ascertained, the evidence in this respect is contradictory and parts of it not credible — as to the cellar leased, the Lease refers merely to a cellar, and having been partitioned off for years before, the part occupied by the Defendt — was the part referred to in the lease & applicable to the part of the house occupied by Defendt —

№ 2358
Cobb. Tubman
vs
McKenzie

action to recover interest of the Capital on sale of an Island to the Defendt—

McScott for Plff— The Defend has offered a statement of the balce due — but it is not correct — The bill drawn for the £1000 was not pd when due & therefore Defendt is not entitled to any premium on that bill —

Mr Griffin for Defendt— The principal diffce between the parties is as to the amount of exchange on the bills — It is not proved that the Brewster was the agent of the plff in rect the bill as such — When the bill was protested, it was Brewster & not the plff who could look to the Defendt for the interest & damages — The plff can take no advantage of any thing touching the bill — when the bill was returned thereon the parties have remained in same situation as when the bill was drawn — The consent of the Defdt as to the quantum of premium cannot avail the plff, as she has no right to take advantage of it — refers to statement filed —

Scott for Plff— Brewster was the sub. factor to the missis and through him the arrangement was made —

№ 2480
Poirier
vs
Perro —

action en Separation de biens — Default con —

Mr Green for Plff — cites 2 Pigeau. p. 179 & 183. — Ravant. p. 699. & 701 — 16 Reps Vo 211. —

2. p.

№ 1099
Bachant
ens
vs
Lebeuf

action for a legacy —

Mr Mondelet for Plff— The question here is whether the Defendt has interfered in the succession of his late wife so as to render him liable to the whole debts of that succession.

an

an Interlocutor was agreed upon referring to Practicers to make an exam^n & make a statement of the Succ^n. The Practicers have made a report - on which two questions of law are raised - On first question became unnecessary - as to the 2? question - it would appear that the Defend^t had intermeddled in the Succession - The Pursuers upon the amount - The estimation of the Estate is different at the time of the estimation from that at the time of making the Inventory & Pltffs contend that the highest estimation is that which ought to be taken -

Mr Lafontaine for Defend^t - the sum of £3 - is all Pltffs are entitled to - The only Succession here is that of the Communauté - The intention of testators was that to compel Defd^t to pay the legacy without means left to pay - The Defend^t holds here as legatee, and it is not appear that the Legacy was ever delivered to him - this is a matter to be proved altho' not pleaded as of matter of right - The Defend^t is not the person who is saisi of the Succ^n it is in the possession of the Executors, who is by law Defd^t - The intention of the Testator is not to be considered - The legatees have accepted the Inventory as made by Defd^t altho made 6 weeks after the delay prescribed by law, & dissolved the Community & stated it as it was at time of death of testators - The estimation of the property was made by Experts named by the Practicers without consent of the parties - The value of the property is of no consideration here, as the possession of it goes to Pltff & to their children. And they have no right to the excess of value put upon it - Moves to be permitted to file debate to the account rendered of the Community -

Saturday 15th April

Pres.t
Ch. Justice Reid
Mr Justice Dyke
Mr Justice Rollard
Mr Justice Gale. —

Ex parte
on Petition of
for Rehearing of Title

On Mr Fishers mo. to preclude the opposts from filing an answer to file to oppos.rs —
Mr. McCord for oppt contends he ought to have had notice to file his reasons. —

Kaunts
v.
McKillops et al

Mr Perrault's mo. to reject Interrogatories, as irrelevant to the contestation in the Cause — cites Brown v Fuller —
Mr. Buchanan for Defend.t The Interrogatories have reference to certain facts & circumstances which took place between the parties —

Ritchie
v.
Sutton.

on Pltff's mo. to discontinue
Mr Driscoll has served notice of an Intervention in the Cause before the discontinuance —

Perry
&
Charette

Mr. Day — Prot Roger p. 799. Vo assignation No 172 — Defend.t was before the Court, and took several proceedings in the Cause by different Counsel he employed. —

No 1101,
Nichols
v.
Jones
&
Garand

Motion for a Com. Rog.rs —
Mr Day for Defend.t objects, as the application too late —

Gale.
vs
Griffin
Girard cal
&
Sewell opp

Mr Buchanan for Girard & Co.
The property sold was situated in Township of Drummond — where Registers report — The Deeds of opport is dated in 1818 — enregistered in the County in March 1835 — the question is whether this registration was made in the time required by Law or whether necessary — The claim of Mr Sewell does not set up a privilege — The first Reg. act. 10 & 11 Geo. ch. 8. — The language for enregistration of Mortgages is different from that regarding deeds of Sale & Conveyance — The argument here that Registration was not made within the year after the pass the act — The next Statute is 1 Wm 4. ch. 3 — here the language between Registers of Mortgages & those of Sale is to be remarked — The last act is 4 Wm 4. ch. 5 — How the parties do not contend with a Mortgage Creditor, but with one who claims on privilege but as a common Creditor —

1 Wm 4. ch 3.

2 Inst. Droit de Mutation vo Inscription. — 700.

4 Kents Comm. p. 168 — p. 426 — the history of Registration and right of preference — 4 Cruise Dig. 485 — 7 Peters 684. Vo Deed — 4 Eng. Law Magazine. p. 295 — Insp. Hyp. by Grichard. 226 — 13. Coll. de Lois. 3 ed. 566-7 2. Troplong on p. 382. on Privileges & Hypoth. — Chabot de l'Allier. p. 290. 2 org. — 4 p. 321. 8. org — Merlin Reps. Inscrip. Hypoth. 4. Sec. Nr. 2. & 3. Sec. 6 — Id — Droit de Droit. Vo Inscrip. Hyp. — Bells Comm. p. 21. & p. 674 5 org. — 2 Dowarris p. 732 — as to the effect of Insinuations. Poth. Don. entre vifs sec. 2. art. 3. —

Mr Griffin for opport. Sewell — The distinctions between English & French Mortgages not attended to — The claim by Girard & Co is for a mortgage from date of Enregistration.

The

The exception is a special term required for registration
The act of 1774 or Lumber Act. not to apply to lands held
in free & Com. Socage — The 6 Geo. 4. ch. 59 — all doubts
removed — a declaratory act —
The 2d Sec. Registry act. is express as to the requisites of registration
a portion of this act as regards the purchasers of lands registering
their deeds but not in respect of hypothecques —
4 & 10. Geo. 4. ch. 77 The mode of creating hyp. on lands in free & Com. Socage — the
Stat. 4 & 10. Geo. 4. ch. 77 seems to derogate from the principle
of hypothecques & allows hyp. on those lands in same manner
as on other lands, where a general description of the lands mortgaged
is given —
Dwarris on Stat. 643. no Stat to be considered void unless
contrary to natural Equity —
Id. p. 790 — the plain words of an act of Parl^t must be
adhered to —
Mr Buchanan in reply — case of Patterson & M'Callum. Stuart's Rep
p. 430 — no hyp. on Lands in free & Com. Soc. —

Dict. de Droit Merlin. Vo Inscription, p 700 —

—No 425

Pasgrave
v
Billange

Mr Griffin for Pltff. The deed on of the Lots & Vendee has
an claimed is in effect a deed of Sale, & tradition of the property
was had thereon — the consideration money is stipulated & a part of it
paid & terms of payt of balance stipulated — The conditions on
the Sale are resolutions merely —
Pothier. ch 26. p. 223. 4 — will apply when engagement for
the conventions —
Ferrier. Vo Parte Commun & Dict. Vo Mutation. —
Bourbeau. p. 178 — distinctions as to different kinds of Sales —
Id —— p. 173 — & p. 181 —
Poth. p. 164. Trans —
1. Henrys quest. 41 — p
Dunoulin tot. 3. p. 165. & 172. Tr. de Trans —
Repr Vo Lods & Ventes. p. 602 — also p 484. & Vente —
O. Dunf. Vo Lods & Ventes p. 179. 80
1 Lasmignon No. 40. 41. —
Tournaux p. 197. ch. 3 & p. 202

Fonmaur № 207 - Mais si le prix, et les conditions de la vente sont fixés, par une promesse réciproque, avec obligation d'en passer acte public dans un certain tems; en un mot lorsque le prix et les clauses du marché sont reglés, c'est une vraie vente deguisée sous la forme d'une promesse, conséquemment sujette aux droits. Jugé à plus forte raison si la promesse de vente a été suivie de la délivrance, ou du paiement total ou partiel du prix.

Mr Lafontaine for Defendt. The question here is whether there is a contract of sale — There is none — mutuation alone does not create Lords & Vassals — The Vendor here is not dessaisie of the land — There is a condition here, that unless the party pay in a certain term the proprietor may take back his property — It is stipulated here that Defendt shall not have the property until a deed be passed — The future here is no contempl. to validate the sale — The Proprr had the right on default of payt of certain sums to sell to another without returning what he had rec'd — There is no absolute transmission of property without of the one can be no valid sale — The parties to future events for perfecting the sale —

p. 162 Poth. Fief — applies to this case — 2d. p. 196. 7. —

2 Fonmaur. № 202. —

Mr Griffin adds Desgarets. 76. art. Cout —

76 art. Cout.

№ 962.

Kennedy vs Kierczynski — } action for Carpenter work — Quest. reserved as to validity of certain questions proposed to the witnesses at the Enquete —

Mr. Meredith for Pltff. The question whether the Pltff had given orders to Defendt to put to the credit of one Jewett a sum of £72, which pltff owed to said Jewett — refers to the Stat. of frauds as to the validity of such evidence — cites from Pothier on Guaranty —

Mr Fisher for the Defendt — The part here is not a guarantor but a payt —

№ 757

De Bleury & Hart vs Hart & Hart opposts } on oppos. afin d'annuller —

Mr Hart opposs — The inscription is irregular —

Ins cription discharged. ——

№ 1212

Ahern
vs
Ehlenberg
et al —

action on a transfer of obligation —

Mr. Badgley for Pltff states the acts under pr. action is brought

Mr Chap. Mondelet for Defendt There never was any contract between Pltff & Ranger under pr. Pltff can bring an action —

That the present Defendts having abandoned the property affected to payt. of the debt, became exonerated from all personal obligation —

The oblign. of 22 June 1818. is executed in favor of Dant Forbes — the obl. of 8 Octr 1825 — by pr. a sum of money was to remain in the hands of the Debt due to Danl & Wm Forbes — & this distt. from obligns due to Dant Forbes alone

Mr Bagley 2 Pr. Com. p. 4 — the personal debt is not discharged by the action hypothn № 13. & 14. —

Repre vo Delaissement — p. 349. 2nd & 2d. Col. —

N. Denizt. vo Concours d'action. № 5. —

№ 632

Courbeau
vs
Marien

On law —

Mr Chr Mondelet for Defendt Stipulation here, that in case the particular sum was not pd on the day stipulated, the whole debt might be demanded — The only question whether the default of deptr operates de plein droit the contract between the parties without any previous demand — This he denies —

Domat liv. 1. Conventions. tit. 1. sec. 5. § 10 —

Repre vo clause. p. 554. 1r 2 col. —

Lacombe. vo clause Resolte № 10 —

Poth. Obl. № 672 —

Merlin Repre v Peine Contractuelle §. 3 —

Finlay vs Robitaille vr Bourneau — 19 Oct 1830 —

Mr

Mr Gosselin for Plff, observes he has no authorities to cite, but refers to the Justice of his Case —

No 1903
Boon
Rolland

Case submitted —

Monday 17th April. —

Pres.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale

Ward
Rolland

Mo. of Defendt to discharge his exception —

Mr Day for Plff, order of Court to complete issue — this was done ~~on the~~ as at times it should have been regularly done — There can be no further Enquête —

Mr Mondelet for Defendt — The issue was not complete and the Enquête was irregular and the whole was liable to be set aside. —

Stapleton
&
Barnard
vs
Divers opps

Mo. of Mr Stroll for oppost — to contest
the demand of Plff —

Mr Walker for Plff — The oppost is too late in his application
Mr Bleury for Barnard objects for same reason —
Mr Hurd for Defendt — same objection —

Roi
&
Beaudry

Mr Dunn's motion for Experts —
Mr Jas. Scott for Defendt — objects —

Donegani
&
Donegani

Mr Buchanan's mov. to be allowed to proceed to discuss the oppositions made in this Cause —

Marteau
&
Reignier

Mo. of Mr Cherrier to foreclose Pltff — 4 day & 15 May —

No. 1162
Fraser
&
Lindsay
&
Fraser

On Rule — that Defendt be held to name an Attorney en name of late Mr Grant —
Mr Day —

In No 1917
Ewing
&
Gardner
&
Todd. T.S.

On rehearing — ordered by the Court
Mr Lafontaine for Pltff — has contested the declaration of T. Saisie — The Defendts were jointly severally debtors of Pltff — on death of wife, the father transferred the stock to his son — The son sold goods to T. S. — in his own name — vide Mr Wood the Clerk states this — The T. S. produces the acct. receipted — The T. S. produces another acct of £200 defendts purchased from Gardner jun, & hen Pltff establishes his claim of fraud in T. S. — G. jun leaves province in May 1835 — The son sues out a Saisie en hands of T. S. for the goods he had recd from the father as being the property of the son — as all the business was then conducted in the name of the son — The Pltff sued out his Saisie in July 1835 — The T. S. made his Declaration that he had nothing en his hands belongs to either father or son — The affairs of Gardners were then in a bad State & publickly known — It appears also that T. S. owes now a balance of £180 — to Gardner jun for which he has given his notes — The Signature to the acct produced by Gardner jun's

wrong

were just then after the Saisie made in his hands — That T. S. admits by his answers, that the balce of £67. 9s. he owed to Gardner père, he gave his note for it to Gardner fils — Gardner fils was no party to this transaction — it was done at a time when Gardner père was on the point of leaving the province —

Mr. Griffin for T. S. The action of Pltff. & Defendt. was on a note drawn by one & endorsed by the other — Saisie-arrêt in the hands of T. S. — his deeds contested — the moyens state many few points — 1st states that a box of shoes & boots were at the time in the hands of T. S. — There is no allegation of bankruptcy in Gardners at this time, nor of any collusion between T. S. & them — The act. filed by Pltff on this ~~action~~ contestation it appears that a sum of £ was due by T. S. to Gardner Jr — There is a Saisie Rev. of 2 boxes of shoes in hands of T. S. — the folio 2 acts in his answer, of — are accepted by both Gardners — Gardner fils gives a receipt for the whole amount due by T. S. —

There is no proof of any notice given of the protest made of the note given by Pltff — or the certificate of the Notary is not sufficient of a Saisie merely stated in his protest —

No. 594 — Billaire vs Dadegarel

On re-hearing —

Mr Lafontaine — as to the validity of the writing in general — says he has found no authority — but refers to the Dict. de l'Academie — where it is said that writing must be made with ink — It is apparent that one of the letters in this act has been retouched by some hand — But it is certain that the act should be endorsed in some way to secure its permanency — & prevent counterfeits —

The act such as it is, constitutes no convention — This is stated to be a loan — no proof of any loan to Mr Plessis — but on what terms or conditions is not appeared — This no contract de prêt. Poth. Prêt. p. 508 & seq. —

Mr —

Mr Boston for Pltff — cited 5 Barn. & Cress. Reps. p. 234 Indorsement in pencil on a promy note, held a valid — Chitty on Bills. Edit. 33. — p. 146. —

The Instrument here is conclusive as to all that is requisite to give a right of action —

No 739
L. Roi
&
Chagnon
&
Chagnon & opp.ts

Our appr appln d'annuller —

Mr Walker for appts — In consequence of the Lost Pltff obtd. in rec.d £50 from Defend.ts & agreed to give delay to Defend.ts for payt. of balance to 1 Jan.y 1838 — it was besides agreed that some property of the Defend.ts should be insured in name of Pltff for £200 for the greater Security of the Pltff — This the Pltff pretends was not done — altho' all was done that Defend.ts could effect —

Liv. 1. Tit. 1. p. 29. Domat. clauses resolutoires —
Repse 554. 1.e clauses resolutoires —
Lacombe. p. 45 — Poth. Obl. No 247 —

Mr Dunras for Pltff — the only question here is whether the Defend.ts have performed their obligation in the time stipulated — here it appears that it was only on the 18 Jan.y that Pltff finding the Defend.ts had not complied w.th the terms of their obligation, he protested of the Defend.ts — The exhibition of the Receipt Defend.ts obl.d was made on the 19 Jan.y — but this gave no security to pltff, as his name was not mentioned in it — This receipt not proved but by one Witness — Has objected to the partial production of papers at the enquête —

Mr Walker — no time was prescribed for effecting the policy of Insurance — but that the receipt of the Insurance should be exhibited to pltff by the 1st Jan.y — When the protest was made, the Defend.ts next day did all that depended on them to transfer their interest to the pltff. by offering to do so —

Considers the transaction with the Insurance offices as — Commercial —

№ 533 & № 1347

Munn dal
S. Davis
&
Begley dal Oppt
and
S. Davis
&
St. Joseph Oppt
&
Lavoyeur dal Oppt

On opposition of Madame Davis for her rights under her Indt of separation vs the Defendt—

Mr Cherrier for Oppt— the marriage Contract of the Oppt not being authentic, has no validity— and the Indt cannot operate as the rights of the Creditors—

Mr Mondelet for Oppost— the question now is only for the reprises—

№ 2450
Chas Ray
&
Lo. Laberge
dal

On an action hypothecaire—

Mondelet for Plff— action brot agt. Defendt— who purchased from Busby, to whom the land had been retroceded by the original Debtor, Lavoyeur— but it is said as there were terms of payt which had not elapsed at time of retrocession

Montin quest. Droit Vo Resolution. p. 473. 474. 5—

Poquet. liv. 3. tit. 6. p. 211. seq—

Mr Buchanan for Defendt— The retrocession here was not a voluntary act— There was a Indt agt Lavoyeur for the amount of the price of the land, & being unable to pay— to prevent expense retroceded the property— and although the retrocession was voluntary, yet in such case there would be no Lods & Ventes, and where the things were entire, the money pt. of the price, the restoration of the parties to the situation in wh. they were could give no right to a Creditor— cites

refers to authority cited p: 218.—

case of Ellice. v—

1 Valin. Cout. Larochelle. p. 158.—
Poth. Vente. nº 475. & № 328—
Cout. d'Orleans. Supplemt. art. on Trefs, p. 102
Poth. on Hyps. ch 3. Sec. 3— p. 464.
Loiseau Deg. 6 liv. 3 ch. № 5. 6. 7
Bowen Comr on Pand. liv. 20. 6e tit. № 8. 29—
Vinnius Inst. Quest. liv. 2. 5e quest.—
Basnage Hyps. — p. ~~103~~ 430
Dumoulin. on Paris. on Trefs. 33. art, № 20— 1 vol. 390—

Poth. Vente. № 329.

3. Henri. 69.

Mr. Mondelet for Plff. Voluntary retrocessions have never been admitted without the rights of third parties attaching thereto — how the contract was perfected between the parties and the rights of third persons thereon necessarily attached —

Mr Buchanan refers to 1 Troplong. p. 191. & seq. —

№ 810

Brown
vs
Reigner dup

Action for Promy Notes

Mr. Day for Plff — action for notes made by the wife of the Defendt before her marriage —

Mr Driscoll for Defendt — It was necessary that there should have been a presentment for payt — the only proof a protest, but this protest refers to different notes from those declared on the age of wife not ment. in his deposition — refers to the Code Civil — Moves to reject the deposition —

Mr Day in reply — no demand or presentment necessary — to maintain the action — no tender here The notes are sufficiently described in the Protest, as far as necessary — As to the age of wife — he is a public notary

№ 812

Brown
vs
Reigner dup

on Promy note

Driscoll for Defendt moves also to reject the testimony of Pat. Kenny a witness as his age not stated in his depos^n — This demand ought to have been comprehended in the other action

Mr Day the note in this case was not protested, & the action could not be brot. after him. —

№ 1724

The King
vs
J. A. Mathieson

On certiorari —

Mr. Badgley for Prosecut — The Stat. expired on 1 of May 1835. and the Magistrate had no jurisdiction — The P. V. was besides a nullity — Ch. Mondelet. 2 Wm 4. ch. 44. — was temporary & is expired — By L. Canada the Commissary of the adjoining parish could not act — Vid. Sec. 22 —

No 757
Bleury
vs
Hart. -
&
Hart. opt

Mr Hart that the Inscription be discharged -

No. 956.

Tuesday 18th. April.

Prest

Ch. Justice Reid. -
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale -

Butler
vs
McCallum

On motion of A. McCallum that the Writ of Ca. ad resp. issued in this Cause be quashed, for the reasons stated in motion. -
The Pltff nor his counsel did not appear

No. 956.
Wm. Scott
vs
Caseau -

On hear'g on Law

Mr. Boston for Defendt - The Defendt has pleaded that the right of the pltff's lessor having ceased the pltff cannot claim the rent of the Mill in question as Defendt has been deprived of the use of it. -

Mr Scott contends that this plea cannot be admitted, this is a plea in nature of reconvention

N. 290.

Turcot
vs
Hurtubise

On Law

Mr Perrault for Pltff — action founded on a Sale made by Defendr to Pltff, & of an eviction of a part of the property sold — a large ditch cut through his property — this done under the authority of the Inspector of highways — qr was a Servitude on the property qr the Defendr ought to have specially stated and guarenteed in his Sale — The Defendt has demurred —

Mr Rodier for Defendr — The Servitude is not of a description to have been specially mentioned — It is of public right, and arising out of the nature and situation of the property — The decr has been amended but it contains nothing new, except that he alledges that the Servitude was a latent one, or occulte, & of which Defr had no knowledge — The Servitude is a Cours d'eau established by P. V. of the Inspector & duly homologated before the sale to the Pltff — This Cours d'eau was opened only in 1831 — Large. Vo Garant. 423 — N Denis. Vo Garantie. p. 153 — Rep. Vo charge. 259. (251.4 Servitude 2. Pothier de la Jouissance — 223. Poth. Vente, p. 538. N —

This Servitude was a visible one, & for which the Vendor is not bound to any guarantie — Such Servitude cannot be purgé by the decret —

Mr. Perrault for Pltff. The amended declaration contains matter sufficient to maintain the action — The cours d'eau has never passed on Pltff's land, before the sale, but it has since been established on his land — The Defendr was bound while proprietor to support the additional charge imposed on the land — this additional charge was known to Defendr but not to Pltff, and ought to have been expressed in the

decd

the deed of Sale. Domat. Vente. Liv. 1. N° 1 Sec 10 p. 45.— How the Cause of eviction existing before the Sale the Vendor was bound to declare it— Id. p. 48. and N. 14— Pothier. p. 494. Vente N° 86— Vendor liable for ~~Evictions in Charge~~ evictions of gts— a grave existed at the time of the Sale. Id. N° 194. & N. 200—

480 Rep^n de Vente. p. 480. 1—

Arnoldi
v
Sabourin

Parties heard on the answers of Pltff to the Interrogatories proposed by the Court—

N° 1202.
Giroux
&
Fullum

On Report of Experts—

Mr. Cherrier for Defendt submits case— but considers that Defendt ought to be allowed to complete his contract— as to Costs Defendt has succeeded in part of his plea.—

N° 124
Fabre
&
Wheelwright

Action for rents— on law

Mr Pelletier— The right of droit de Suite is not allowed to the propre unless he prosecutes his claim without delay— The declaration here does not shew that the property effects were affected to the privilege claimed— No fraud or collusion is alledged to have taken place between Defendts— When the action was instituted the Pltff had no acquired right agt the Dfendts personally—

Mr Perrault for Pltff. The Pltff cites Rep^n de Bail. p. 24

The Pltff alledges sufficient in the declaration to entitle him to his action ag[t] Defend[r] personally —
Poth. p. 204. 6 — Proc. Civ. — N°. 116. Poth. Oblig[ns] —

N°2284
Cadieu
&
Campeau
&
Campeau op[t]

On Law —
M[r] Perrault for Oppos[t] — contends that as the pltff has admitted the truth of p[t] art of the facts alledged as to the validity of the Saisie — the Saisie ought to be set aside —

M[r] Dumas for Pltff — admits some of the facts, but contends that Defend[r] ought to have made some offers to prevent a further proceeding, as the time to which was granted to Defend[r] —

N°. 1368.
Gervais
&
Frichette
&
Frichette
opt

On Law — on opposition of Frichette —
M[r] Lafontaine — The oppt[r] claims certain sums due to him in consequence of his having been obliged to quit the premises — viz. the Lods & Ventes & Pltff — & the Improvements — The pltff has set up an insufficient answer to this opposition, as Defr is entitled to the reimbursement of these monies — refers to the 79[e] art. of the Custom as to the Lods & Ventes — As to the improvements it is contended oppt should have claimed them by his plea to the original action — but this unfounded — The pltff here pleads compensation — but Pltff has no right to plead this, as Pltff[s] are not the Creditors of Defend[r] — and they shew no title by which they can claim any right to any of the objects they so set up in compensation —

74

Mr

Mr Blenny for Pltff. The oppost has no claim on the property sold, but only agt his Vendor — Pradhom. p. 357 — The recourse of Oppt is agt the Seigneur for his Lods & Ventes — as to the impenses Repon Vo Delaissement. 349. —

No 401

Sapton val
"
Barnard
&
Burroughs
& oppos[ts]

Our Judgt of Distribution —

Mr Blenny for Defendr The only question is as to the balance after payt of the dfts debt.

Mr. Walker for Pltff. Opposes the claim of Stephen Barnard, asks that of Scott & Temain, & that the whole monies should be paid over to the Pltffs — The claim of Pltff is founded on an obligon en 1813 — The transfer of 1792. The property of 3 minors was transferred only by two of them to St. Barnard — The deed of the Sheriff given to St. Barnard, en 1827 — was of part of the property, except that to which St. Barnard was the Curator — but the lands were seized as the property of St. B — under a Judt rendered against him by collusion at the Suit of Mr Hart, & seized at St. B's own request —

Mr Scott for several oppos[ts] There is evident appearance of a fraud in S. Barnard's claim, as it is founded on proceedings wch were irregular, & that he has been availing himself of his situation of Curator to Estate of St. Barnard to acquire a right of property in it wch he could not legally do —

That the oppos[ts] Scott & al' having enregistered their

Just

Judge / and that Pltffs had not complied with Jugt at all – the pretension set up by Pltffs that the lands had been previously surveyed to the existence of the Registry acts, and remained under suspense until Sold avoids the necessity such registration, will not avail them, as they purchased the lands but did not pay for them because as the lands by that means were never divested out of the Defendts

Arbitrament & Solicitation

Mr Blenry for St. Barnard – There is no appearance of fraud in the claim of St. Barnard, and the observations of the Pltffs cannot be admitted – refuses to Jugt signed by all the parties except Pltffs

No 149.
Seaver
vs
Weir –

Action for price of 2 lots of land sold to Defdt by tirage au Sort –

Mr Drummond for Pltff – Certain conditions were publicly proposed for disposing of the lands – the Defdt subscribed these conditions for 2 lots – this is a promise to purchase – & he now refuses to complete –

Mr Hart for Defdt – The Defdt has pleaded refers to Criminal law 10 & 11 Wm 3. ch. 17. sec. 1 – and 5 Geo 1. ch. 9. sec. 43 – & 8 Geo. 1. ch. 2. sec. 36 – This is a lottery of lands – or a drawing by lots, as pointed out by the Statute –

There is a defense on fond en droit – when a particular mode of drawing is agreed to, it ought to have been set out – Defdt. no party to the drawing. –

That one John Blackwood drew for Defdt without any authority from him –

Mr Drummond in reply – The Br. Stat. do not apply it being merely a penal law – The draw was to be made whether parties were present or not –

№1033.

Ward
Rollard

Action for Sale and delivery of certain

Mr Day for Plff refers to the argument already had in the Cause on October last—

Mr Mondelet for Defdt— If Defendt was bound it was only as Caution, as he had directed that he had intimated that the bearer of the letter to them was to pay them— The Plffs have presented their act only 18 months after the delivery of the articles— There is no proof of any delivery to Defendt— or to what amount.—

—

Wednesday 19th April.

Pres.t

Ch. Justice Reid
Mr Justice Dyke
Mr Justice Rollard
Mr Justice Gale—

№767. & 2718

Beaubien
Hart.—
Hart. opp.t

On motion of Bleury for Plff. that the Court dismiss the opposition in this Cause inasmuchas the Sumis was granted upon an unfounded allegation of an appeal from the Judgt—

Mr Hart in person, states that an appeal has been instituted, and regularly served, and in consequence of which mesnes d.t oppn have been filed

The King
v
Gagnon & al

Ou certiorari.—
On motion of Mr. Clk Mondelet that this cause be fixed for hearing on the 1st June next—
28 Mr Bleury objects to the motion, that Mr Mondelet is not entitled to make the motion for the Magistrates, having no interest— That he has given notice that the Cause is inscribed for the 5 June next—

No 123.
Fabre. ex
v
Wheeler.

Rule for attachment discharged

No
Adams.
v
Annesley.

Action dismissed wt out Costs— all the pleadgs irregular—

Ermatinger
v
Mead—

Judgt for puff on the award of arbitrators

Lafontaine
v
Laberge & al

Action dismissed as to Mdonell & Judgt agt Laberge.—

Roi. ex
v
Chagnon.—
&
Chagnon opt

Seizure set aside with Costs—

Themens
v
Meunier

Action dismissed—

No 2716.
Ex parte
Archambault
& al
v
Fabrique de
St Hyacinthe

Rule for Mandamus absolute—

Perry. ua
Charette — } Judgt for Plff —

Nº 1202
Giroux
& Fullum — } Report of Experts homologated

Nº
Arnoldi.
& Sabourin } Judgt for Plff

Nº 1724
Rex
& Mathison — } Judgt of the Justice quashed —

Nº 739
Le Roi
& Chagnon
Chagnon opp.t — } Opposition maintained & Seizure set aside

Nº 1867.
Monkman
& Lauzon — } Action dismissed —

Thursday 20th April.

Pres.t—

Ch. Justice Reid.
Mr Justice Pyke.
Mr Justice Rolland.
Mr Justice Gale.—

No 159.
Brown —
v
Simmons

on Motion of Mr Green, that his costs be paid before another attorney be allowed to proceed in the Cause for Plff

~~Hart~~
v
Duncan

on Defendt mo. to dismiss cause for not proceeding
delay granted

No 58.
McKillip
v
Wheelerdal

On motion of Henry Brownrigg to quash process, as service not regularly made—
Mr Andrews for Plff moves to amend—

No 425.
Pangman
v
Bellanger

Judgt for Plff

No 1368
Gervais
v
Frichette
&
Frichette opt

Plea of exception en droit of Defendt & oppt—
dismissed wt Costs—

No 124.
Fabre
&
Wheelerdal

Order for proof—

№632.

Courteau & Marien — } Action dismissed

Drouin — & Labrosse — } Judgt for pltff —

Mount & Dewitt — } Judgt on award of arbitrators

June Term. 1837.

Thursday 1st June.

Pres.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Benning
Morin
&
par reps. D'ents.

on Mr Driscoll's motion to declare the enquete closed from want of diligence of the Defend. for reprise d'instance —

Mr J. Scott for Defend. objects, that the Cause ought to have been inscribed upon the Defend. fn enquete anew after the reprise d'instance — The parties now not same as when the Cause was inscribed —

No 1599.
Farrell dup.
Prohaine
&
Gray. Cart

Mr Walker's mot. for continuance of the Enquete on behalf of Plff. & the Entry in Enquete book ~~absent~~ Discharged —

Mr Driscoll for Defend. in garantie — on 9th Dec. 1833 the Plffs. declared they had no further evidence to adduce, except as to the testimony adduced on the Comm. Roys.

No 868
Gregg
&
Ermatinger

Mr Day's mot. to reject depositions of Clerk as irregularly taken & dismissation of Cause discharged — as there is a previous Law hearing to be had — The action is of cert.

&

and the books in question are in the possn of Plff this is admitted, & therefore the question of the right of action comes first before the Court — The very documents on wh the acct. can be rendered are now in Plff's & he has thereby the means of obtaining all the information he requires by this action — The Enquete is not yet closed. & the Inscription for hearing on merits is premature — There is no Replication

Mr Gregg in answer — The parties proceeded by consent to the Enquete — The Issue is joined regularly — upon pleas to the merits — can't say the Enquete was regular —

No 401
Stephenson dal
&
Burroughs
&
Barnard
&
Barnard opt —

on motion of Mr Walker for Plff to discharge the délibéré & to allow them to plead to the Defts on ground that facts stated have been discovered since last hearing in Cause —

Mr Bleury for Defts — admits a partial payt of the monies levied by consent of all parties — a Judt of Distribn agreed on by all parties except Plff — that papers now produced are not authentic —

motion withdrawn

No 387.
Mongeon
&
Normandin
&
Loiselle, Cnl

Mo. by Mr Gregg for Defendt —
On rule upon Chas Mongeon père & Charles Mongeon fils, to hold them answerable for the amt of the purchase at Sheriff's Sale. —

Friday. 2d June.

Pres.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

No 1005.

Mallet & al
vs
Doret

Our objection to certain evidence.

Mr. Ch. Mondelet for Plffs. Question if the regularity of the proceedings had before the Bishop & Commrs for the erection of Churches &c can be enquired into by this Court. Whether the truth of the fact can be enquired into that the majority of the parish had applied to the Bishop for the erection of the Church. whether the election of the Syndics was regular as confirmed by the Commissioners.

By the ordce of 1811. there are three distinct tribunals pointed out in these matters. Refers to the commission of Mr Jacques Duchesneau. 2 Edits Ords pp. 46.

2 Edits Ord. p. 46

By sec. 8. of Judicature act. the Jurisdiction of this Court is restrained in matters respecting building Churches &c. What therefore is done by the Bishop or the Commissioners is not liable to contest before this Court but must be taken as a dernier jugé.

Mr Bruneau for Defendt. The only question here is whether the facts pleaded by Defendts are to be proved or not. the Court has decided, that the proof is admissible the acts & conduct of the Deputy of the Bishop & all other acts done by the Commissioners, can be enquired into only before this Court, otherwise great injustice might be done.

The pltffs. have complied with the Instr. of the Court by fixing the Cause for enquête on those very facts. after the Court has denied the proof

Saturday 3d June.—

Prest.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale

Wright & al
vs
Harvey & al

on motion of Mr Buchanan that he be permitted on behalf of the Attorney General to move to set aside the délibéré in this Cause & to file an Intervention on behalf of the Crown.—

Mr Stevenson for Pltff objects to the motion. as irregular and inadmissible.—

Archambault
Solicitor
vs
Bleury & al

On motion of Pltff to discharge the inscription of the Cause, & that the Deft of the Pltff be held to make his report.— Motion opposed by the appt.—

Carmichael
vs
Gray.
& contra

Mr Drummond's mo. to discharge inscription & to re-open the Enquête — p. 267. Graham on New Trials.

Mr Bleakley for Pltff — objects — plea non-ass. & mesne demand — Enquête in Dist. Court — on 12 Dec. Depos. produced a Week Mr Intosh — but his depn not closed — cont. to Court

but

but in Sandz nothing was done – In the Actions of Enquête en main – nothing yet done – Plff intended to have Enquête closed – in May no proceedings could had by Defdt when Enquête was closed –

№1447.
Dunning
vs
Forrester

Ord Defendt mo. to dismiss action from delay
Mr Driscoll for Plff – this not the subject for a
Judicature rule –

№1226.
Russeldale
vs
Guy –

action on a Caution judiciaire –
Mr Fisher for Plff. The Debtor of Plff gave
Defendt as one of his bail – not to depart the limits of the
Town or that Debtor to pay Debt – The law extended the
privilege to the County – Debtor kept the Town – This
action founded on the default of Debtor – The plea has
that the Contract was vacated by the change of the law –
Mr Guy for Defendt There is no proof of the
limits of the town, nor whether Defendt Guy has exceeded
those limits –
Mr Fisher, the limits of the city are fixed by the
proclamation of Sir Alured Clarke of 7 May 1792.

7 May

№94
Judah
vs
Chabert

action on transport of Obligation –
Mr Perrault for Defdt – There is a variance between
the Declaration and that proved – no proof
of the signification of transport –

№ 523.

Adams
v
Talon & Lespinasse

Mr Pirrault for Defend^t says, he has pleaded to each of the Counts & prayed for their dismissal & has admitted that on the promissory note as the only one supported — prays that the demands not proved be dismissed.—

Monday 5th June.

Present

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale. —

McCallum
vs
Walters
& Intervs

On motion of Mr Boston for the Intervs party to proceed as Intervenor —

Gregg
vs
Ennatinger

Plff's mo. to have the Enquete closed under the circumstances stated in the affidavit filed —

Mr Day for Defendr objects to the application as contrary to the rules & practice of the Court —

McKinnon
vs
Campbell

Mo. for publication of Com. Rogs —

Mr. Driscoll for Defendr objects, that one of Plff's only is proceeding alone after decease of the other Plff & there is before no affidavit showing the regular conveyance of the com. Rogs — Mo. withdrawn —

Sexton —
vs
Barnard
&
Barnard opp

Mo. for Plff to open the delibéré — & be allowed to plead to the oppn — under circumstances stated in an affidavit filed in support of motion. —

Mr Cleary for Oppt objects to the motion, as no objection has ever been raised to the Oppr of he cause the Plffs have recognized the right of the Oppt by signing a motion for payt of part of the money levied being for Oppt

Hart
vs
Ferguson

Mo. for copy of Decln over till to-morrow

~~Mr Boston for Plffs, objects it was too late~~

Stringer
vs
Adams

Mo. for Defendt by Mr Bruce to be allowed to enter appr for D & take off the defaults entered against him under circumstances stated in an affidavit - irregularity of service

Mr Boston for Plff contends that application is irregular and too late. -

Consigny
vs
Bourdeau

Mr C. Bruneau for Defendt - moves that the entry in the Enquete book closing the Enquete be revised and corrected & the Enquete continued -

Smith
vs
Theodore

Mr Days mo. to close Enquete -
objected to by Mr Hart for Defendt on affidavit produced - absence of a witness -

No 943
Tracey, Curr
vs
St Cameron

Mr Driscoll appr for Defend Splid an
ant -

On Petition of Inft Bt Chanetta v Chanetta —

On Petition of Defts Lordship ordered in this cause as him. —

№ 375.

Frost & al v Smith & al

Action on prom. note —

Mr John Day for Defts — has pleaded by Mrs Smith — ~~contends~~ that Mrs Smith never gave any authority to any one to sign Note for her —

Mr Griffin for Pltff — The husband & wife have united in their plea & must be bound by it —

White Hendrix

Parsons. Mart. Com. № 63. p. 87. —

№ 464

Chapdelaine vs Hus —

Action on Obligation —

Mr Girard for Pltff states that only question as to the Costs, as the principal has been arrested & put into Court.

Mr Driscoll. the only question is whether Defndt ought to pay Costs as no demand was made on him before the action was sued out — Defts Caution Solidaire — & this is a diff plan from principal debtor — no previous notice or demand being made, he ought on tender of the money to be exonerated from the Costs. —

Poth. Obl. № —

Reps vo Paiement. p. 80. col. 2 & 5 —

Defndt not bound to pay interest, as the principal was not bound to pay interest. —

№ 1136.

Glackmeyer v. Platt & al — } action for damages done to the Plaint's son of Plff by the Defend's dogs.

Mr Fisher for Defend's — plea general issue — Def's insufficient — no Judt can be given on it — not alledged that dogs were of a ferocious nature & that they were known to be such by the Defend's — 3 Bl. Com. p. 152 — Bull. N. P. p. 77.

№ 2571.

M'Namee v. Kirk & al — Green & opp's } on opposition of Green, claiming certain articles belong's to him seized in the poss'n of Def'd's

Mr. Morgan for Plff — contends that the evidence in support of oppos'n is insufficient

Tuesday 6th June.

Present

Ch. Justice Reid
Mr Justice Pyke.
Mr Justice Rolland
Mr Justice Gale.

Monjeon vs } On motion of Mr Rollin for

Munn vs Davies & Begley Intl vs Davies } Mr Currie's motion to dismiss appl

Mellish Intl vs Armour Mellish for resp. d'inst } On Mr Griffin's mo. to foreclose certain parties from pleading reply & sometimes on cert. rendered

No 245.
Baldwin vs Clifford Intl } On Defendts mo. to quash process, from the insufficiency of the affidavit.
Mr Hartyn Pleff moves to amend the declaration

No. 861.
Ls Nau
to
I. S. Sartigue
&
Lafrance

action as. Lafrance is en
for having taken poss. of the benefice of Pluff
and up raised his rights therein. –

Mr Lafontaine for Pluff – The Pluff was appointed Curé of the parish of St. Jn Bte en May 1834. and cont? to enjoy the poss? quietly until May 1836 – In Dec?. 1836. he rec?. a notice from the Bishop, that he would cease to be Curé of that parish, & that another was appointed in his place – In Sept. last the Bishop of Montreal took poss? of his situation, and as the Diocesan of Pluff confirmed the orders of the Bishop of Dublee – The Pluff called for the grounds of the complaint of him – In Sept. last the Curé of St Valentin took poss? of the Pluff's Cure – & certain written communications took place between them – The Bishop of Montreal cites the Pluff to appear before him to answer to the complaint of him for having refused to comply wt certain orders given to him by the Bishop. The Pluff appd before Bishop, but declined his Jurisdiction & withdrew – on this a Sentence was pronounced of him & signified to him –

The question now raised is whether the Curés are removable, and the action is to set aside the proceedings had agt him – The Defendrs decline the Jurisdiction of this Court – There is also an Exception that the parish of St Jn Bte is only a simple Mission & not a regularly appointed parish – 3d That to render the Curé removable certain formalities shd have been observed, wh have not – 4th That poss? Civile is necessary to be taken by the Curé – That the poss? Civile taken by Pluff was too late, as made after Pluff had been deprived of his functions. –

The Edit of 1679 is only declaratory of the Common Law, & that at all times the Curés were immovable — That the laws of France cannot be considered as in force in this Province —

The Respts declinatr is founded on this that this Court has no Jurisdn by Ordre of 1667. the Lieut Civil often adjudged on benefical matters. Art. 4. du Tit. 15. — Poth. Proc. Civ. sur Jurisdn & Incompet. p. 113 — & refers to the Journ. des Audts. 2d 4e Vol. p. 566. & seq. — also refers to same Journ. p. 379. ch. 19. these questions are to be decided by the Civil Courts & not by the Eccl. Courts —

The Curé is entitled to certain Fees & emoluments as such & for qt he has his action in the Civil Courts only —

The Immte existed at all times before even the discovery of Canada — Every Country has its peculiar laws & rights in its Church — even in the diffte Catholic Countries — and it is agreed by the legislature of France that the powers of the Church originate in the Civil authority. —

Dict. Droit Canonique tom. 3. p. 153. in fine

The Curé is bound by the Canons of the Church to reside in their parish, & could not be removed from it — There were Curés seculiers & reguliers — the first of qts were immble & this was extended to the others — Originally there were no parishes — but as populn increased, Curés were appointed, particularly Curés reguliers, who belonged to no particular community, but depended on their bishop qt constituted the diffte between Curé Reguliers & Seculiers — There are several Councils directing the appointment of Curés as immobiles — 1. Traité de Benefices par Mr Gouard p. 789. & 789. says that the Curés seculiers are immobiles — & cites several Canons of the Church. —

Dict. des Conciles in 1215 of Latran

Repse vo Benefice — p 269 & 270 Curés &c are immobiles — refers to Journ. — as under p. 856. & 858.

856. 8

Nouv. Dictz. 733. 739. vo Curé — & p. 727 — several reasons given why the Curés are immobiles — without the power even of the Superiors even the Pope to deprive them of their possession

N. Denizt Vo Immovable. — gives the definition of what Immovable is — & says that the Canonical appointments are of this kind —

1 Lib. de l'Eglis Gallicane. p. 31. 289. Laur. same principle by Dupuis. —

356 Dupuis - Droit Can. de la France - p. 356 — The Benefices should be granted in their entirety — & that the clause of resolution ad nutum is illegal —

2 J. du Palais. 255. where a similar question is treated —

1 Jour. Palais. p. 960 - similar principle is established

3 Mem. du Clergé. 322. & arg. same doctrine — & Decret of Pope of Alex. 3. sur Benefices —

412 N. Denis. Vo Benefices Eccles. p. 412. 414 —

Durand de Maillane p. 461 & auth. Vo Cure. 2507. 509.

~~Dunod~~ Vo Benefices — & Vo ~~Immovables~~ Immovable —

Henrion. 227. 230 —

There are cases where the benefice may become Vacant & where these cases are pointed out all others must be excluded — & Pastor is not within any of these —

Durand. Vo Paroisse. 226. 227. — also Vacance de benefice.

The immovability de Curé had created many difficulties which occasioned the Decree of 1686, by wh they are declared immovable — this was a declaratory law. and not a new principle, & applies to all Curés whether Seculiers or regulieres — & forbids the appointing any Curés immovables — That certain Communities had the right to deservir certain parishes & to appoint Vicaires for that purpose — but from the difficulties that occured they were told to appoint only of Vicaires removable —

The Decree of the Erection of the Seminary of Quebec in 1663. — the Bishop of the day solicited that the Curés should be immovables — But if the Curés were immovable why should he have asked of the King to render the

Curés

Curés of the Country amovibles – but
1 Edit & Ord. 23. & 25 – when the ordre of 1679 the King directs
that the Cures shd be irremovable.

p. 244 In 1679. the famous arrêt was made declaring the Curés irremovable – & the Dimes were declared to belong to them – before this all the Dimes were in the direction of the Bishop who gave to each Curé his portion – & portion congrue.

It is contended that this arrêt of 1679 cannot have force of Law as made without the Consent of the Eccles.e authority But under what authority are the Curés entitled to claim their Dimes but by this arrêt? & if it has effect in this respect it must be equally Law in all other Matters –

In 1699 the Bishop presented a requête a petition requesting a change of the Law in one part only, thereby recognizing its validity in other respects –

P. 292. Ed. & Ord. regards the patronage given to the Seigneurs, of which the Bishop complained. – but he did not complain of the irremovability of the Curés –

The obligation of building Churches is also founded on Arrêt of 1679. & is still followed up as Law in the Country

1 Vol. 277. Difficulties arose between the Bishop & Seminary of Quebec – the award of Archb.p of Paris & Pr. Lachaise – refers to the last Decln of the King of France. which was on 29 Jan.y 1686 – 29 Jan.y 1686. there appears no Decln later –

Ed. p. 304 – when Seminary of Montreal requests the junction of certain Cures – they are called Curés not parishes. – here the St Sulpicians express their opinion as to the amovibility of the Curés & refer to the arrêt of 1679. & 1686, as the Law on the subject –

Cites the Case of M.r Recher in 1649. at Quebec – where the Council Sup.r decided that the person named by the Bishop was the person legally appointed, notwithstanding the direction of the Pope to the Contrary –

That the parish of Ste Ste Be is not a parish — This point is a matter of fact — but it has been always acknowledged as a parish with all the Civil rights attached to it

It is also contended — That the letters de provision given by the Bishop to the Pltff. as letters de mission contain a condition of being removable at his option and the Pltff cannot hold his obtention contrary to this condition — But the Curé is appointed for the benefit of the parishioners & such a condition is illegal & contrary to Arrêt of 1679 — refers to the Arrêt from the Journ. des audiences — calls such a condition illegal — p. 127. 3 Vol. Mem. du Clergé — The usage is invoked, by pltff it is said that at all times the Curés have been removable — Usage here is a thing uncertain & establishes no certain rule to be admitted as the law — If the Curés have not insisted on their rights & resigned their situations this cannot established a usage contrary to law The Eccles. law is of public right, droit public. Rep. vo Droit. — 7 Nouv. Denis vo Droit p. 219 — Domat. Droit pub. — tit. 19 — des usages — assimilates the case to the appointment of the Judges —

That certain formalities were requisite to render the Curé fixed in his Cure — particularly the Visa of the Bishop for this purpose — There is no case where the Bishop granted the visa, by his letters of provision the visa not applicable here — refers to cases where the Pope or some other authority —

L'acte de prise de possession not necessary to confer the right on the older possessor when he cannot have the Pos. Civile 587. to 593. Poth. Poss. 5 Denis. Complainte Beneficiale Durand. Visa — Here pltff has the real possession —

The acte de prise de possn civile taken by Pltff, although not necessary for Pltff, has caused all the difficulty— It is treated as a scandalous offence —

The last ground is the suspension pronounced by the Bishop in consequence of his sentence of the 8 sept 1836 — But if the Curé had a right to retain the possn of his Cure, the offence of which he was accused was no offence, as he was holds possn of what he had a right to retain

3. Conference de Paris. p. —

Mr Cherrier for Deffdr — repls to the conclusions taken by the pltff in his declr of the Bishop of Montreal — To this demand there are several exceptions —

1. Exceptn Declinatoire — In this the Deffr has 2 objects in view 1st that the Court cannot enquire into the validity of the sentence of the Bishop of Pltff — 2e cannot enquire into the reasons of the Bishop for placing or displacing a Curé — This latter falls under the question of removability of the Curés — & therefor depends on it —

The suspension pronounced on Pltff was for his having been guilty of Canonical offences — This Court cannot enquire into this sentence, nor correct it. — The two powers Court & Spiritual are wholly distinct Berglay. Dic. de Theologie. Vo Ecclesiastique — (Henrion. p. 4. 5. 6. 7. It is therefor the duty of the Ecclesiastical authority alone to regulate the missions of spiritual persons and the nature of their duty — Traité de l'abbé Rey. tom. 3. p. 235. — & p. 252. —

3 tom. p. 235. Abbé Rey.

Nouveau Denizt. Vo — Abus — p. 12 No 5. Ferret — { to shew in what cases the Courts can interfere with Ecl. authority —

Dic. Droit Can. Vo — Abus. —

No Civil Court can grant the conclusions of the pltff's demand — it cannot grant to the Pltff those powers of which he complains the Bishop has deprived him, nor adjudge upon the sentence of the Bishop in any way —

The only protection claimed by the Defendr here is that protection which is due to every description of religious faith & sect among us —

E. I. Henricourt — as to the power of Bishop —
7 Mem. Clergé. p. 151 —

On the exceptions —
1st That the parish of St Ls was never canonically erected & appointed as such —
resps 1 & 2 pages of the Memoire of Defdr The Defendr does not refer to the Civil erection of the parish or the possession & rights accruing thereon to Plff as Curé — but the spiritual erection of the parish is denied by Dfdr there is no — limits or circonscription ascertained — there is no benefice en titre —
2. The Plff has no title & has not observed the necessary formality to entitle him to this action — in the complaints beneficiale the party must have a title, in Curé matters possr alone is sufficient — N. Denisart Vo Complaints p. 17. art. 1 — Henricourt p. 606. 7 — 1. Cochin p. 203 — p. 4. 5. 6. 7. 8. du memoire of Dfdr — a parish may be served by a Curé not erected or attached to it. ——
Vo Cure dissertn. Laroche. Dec. Canon —
The Plff cannot invoke the Edit of 1679, as it gives him no title — unless it be said that every Curé named to serve a parish thereby becomes a Curé fixe, which is not the interpretation to be put on the Edit — Nor does the Plff shew that he was appointed by virtue of that Edit — The appointment made by the Bishop may be founded on different principles & for various purposes as circumstances may require, & may limit or extend the power given to the Curé — Henricourt. p. 467. art 1. & 2 — The Bishop is enjoined to make such appointments of Curé irremovable but if the appointment be different the Curé can complain only as to that appointment, & demand that it be

be expended on the terms of the Edit of 1679 – But the Pltff having no other title than that given him, can exercise no other right than such title gives him –

refers to ps. 4. 5. 6. 8. 9 – as to the formalities to be observed – Observes on the authority given by Law to the Executive to name Curés not removeable – yet if the authority were otherwise exercised the Curés so named must be such only as their Commissions made them –

The arrets cited as to the unmoveability of the Clergy may have been founded on grounds very different from the present – the original appointment may have been to a Cure fixe. –

Refers to the similarity of Cases of the Fabrique of Montreal for the rent of Banes in the Church, where Defdrs set up a claim to a Bane for life – but Court held them bound by the conditions under which they had leased them –

1 Henry. p. 471. Title necessary – If Pltff had no title such as the law entitled him to he ought to have made his claim to obtain such title –

As to the Exceps. 5 & 6 – The Pltff cannot maintain his action without having observed the formalities – ps. 5. 6. 7 of the Memoire – Poth. Poss. No. 139. – 1 Desrande de Maillane. Vo. Vicaire – The nomination of Pltff may have been for an uncertain period or for a particular object – See the forms of Provision. Durand de Maillane. Vo Provision –

The prise de possession was made at the time that his powers for the desserte of the parish were revoked 25th. Augt – Durande. Vo Provision – there is no legal possession of benefice without title. –

The Pltff having been deprived of his powers of Curé could not after that proceed fulfill the duties to which he had been appointed –

Had the Pltff been unavoidably, he could not after suspension demand to be continued in the exercise of his functions, but demand that an assistant should be provided for him to do the duties he could no longer perform –

Resp^rs v^o Seaspens —

The Resp^ts cannot come here, comme appellant d'abus, as the Court cannot entertain such claim, such as was sometimes allowed in France in some extraordinary cases — he must go before a more competent Jurisdiction. —

Here the fourteen argument was continued to to morrow at nine o'Clock A. M. —

Wednesday 7^th June.

Present

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale

N^o 864.
L^s Nau.
v^s
Lartigue
&
N^o
L^s Nau.
v^s
Lafrance. —

The argument was continued. —

M^r Cherrier — resent to some remarks he says he had omitted in the preceding argument — Says, That in all religious associations the rules admitted in such associations should be binding on all its members, & if they refuse to do so, they ought to be by the apostolic abjured such association — Ch. 18. S. 15. Act, — The words used by Gallo apply to the case here, where no established religion prevails. — That Protestants have even complained of the violation of the civil authority in the exercise of that authority in religious matters. Abbé Pey. 419. —
2 Abbé Pey. 213 — The appel comme d'abus is allowed only in very extraordy Cases —

419

Gouv^t des Colonies.

2 Petit 495 states the difficulties q^e occurred in the establishment of the Bishoprick of Quebec, which eventually was carried to — depend directly of the Pope & not to constitute any part of the

Clergy

Clergy of France, qt shews that the same rules will not hold here as have been established in France —

Hericourt 188. 9

How the Bishop exercises his authority without being tied down to any particular form — art. 5. 6. 7. Hericourt. p. 188. 189. — when the Bishop acts by his official in a contentious Jurisdiction there are rules by qt he must be guided — but here this does not hold —

How as to the inamovibility of Curés. —

3 Pey. 401. 2. 3.

The Spiritual power is under no controul of the Civil — 3. Abbé Pey. 401. 2. 3. — Vo Benefice. 305. 306. Durand de Maillane — 2. Pey. pp. 378. & 453 as to the nature of Benefices & distinction as to what belongs to the Civil & what to the Ecclesiastical authority

The right of patronage was a Concession made by the Church, granted in times of ignorance, but made in return for concessions made to the Church —

according to the Eccles. law of France, there are strong grounds in favor of the inamovibility of the Curés — Mem. 16. 17. 18. 19 — & to 23 — The rules made in favor of the inamovibilité of Curés were never made aft. the Bishops — they were made in regard of the Curés privileges to compel them to appoint Vicaires perpetuels with sufficient appointments. — sec. 7. p. 31. Concile de Trente — p. 645. 3 Vol. Mem. du Clergé. Tho' law in favor of the inamovibility of the Curés — yet in France many Curés were found to be amovibles — ,
Fevret traité des Curés primitifs — shews the nature of this rule as to the establishment of Vicaires w. fixed appointment —
That were the Common law of France even in favor of inamovibility of Curés — yet it cannot be invoked in this Country, from the Circumstances of the Country, & different state of Society — and the Eccl. law of France was never considered as holding in all respects as the rule of law governing the ecclesiastical state in this Country, even from the establishment of the first Bishop in the Colony. —

Great Common. to be found in the Monumens historiques
qu'en: Abbé Latour. & Gouv. des Colonies par Pelet — to shew in

in what manner Curés were ~~[illegible]~~ appointed by the Bishop to the different parishes. — p. 464. —

Henrion. 201 — gives the interpretation as to the extent of Jurisdiction of the Civil Courts as to Eccl. matters — The establishment of the Seminary of Quebec by the first Bishop, did not there demand any change in the Common Law as to enamovibility of the parish priests, but required that that Body should possess certain property on certain conditions —

as to the reglement of 1682 made between the Bishop & the Seminary the amovibility of the Curés was there only incidentally spoken of —

That the reglement of 1686 - cannot be considered to govern regulating between the Curés generally & their Vicaires — The 5e. sec. is relied on as introducing the enamovibility of the Curés — but it is also stated that no benefice could be erected without the Consent of the bishop & the King also

art. 5. p. 277

Edit of 1679. cannot be interpreted as introducing the point contended for by Pluff — the first objn. is the defect of competence in the Civil authority — 3. Abbé Pey. 236 — as the right of patronage, when attached to property, if held by a protestant could not be exercised by him, as a right granted by the Church Id. p. ~~254~~ 254 — neither could the King prevent the collation of the Bishop for a limited time to a benefice —

Had the Edit of 1679 been always executed in the Country the presumption wd be that the Eccl. authorities had consented thereto — but the contrary is the fact. — as there was no competent authority to execute it —

From the general dispositions of the Edit, the Curés are not made fixed — The title of the Edit is very different from its general tenor, & applies only to those Curés who were really ~~enamovibles~~ irremovables, who must be rendered such by their appointment — But unless the enamovibility be attached to the office of Curé, the plff's claim must fail —

yet

Yet there is nothing of this in the Edit — This is manifestly is attached only to the person & not to the Office —

A contrary usage has rendered the Edit of none effect —

446 1 Fuller. p. 129. — 1. Duranton 64. — 9. d'Agueseau. p. 446.
11 Merlin Quest. Droit. V° Opposition au Juf. p. 3 an de faut —
Merlin. V° appel. & Id. V° Usage. There is a law regarding the inamovability of Vicars which however has fallen into desuetude 134. Favard. abus.

But it is s^d now are dimes to be claimed if the Edit is not in force — bad To this it is answered, that parts of this law may have been executed & the other not — The perception of the dimes & the inamovability of the Curé are things different & independant — Besides the dimes are due by other laws — even by the Common law — also cause of Mr Chabouillez v Robert — where dimes were due to the Curé amovable in 1833 —

That the Govt has been connived at the non-usage or abrogation of this Edit. Mem. 40. 1. 3. — By the correspondence between the Secretary of the King & the Bishop of Quebec —

The Legislature of the Country has recognized the system of inamovability by Stat. 1 Wm 4. ch. 57. 1831. — by the — 1831. Ch. 57. 1 Wm 4.
nomination of Commissioners to ascertain the limits of the parishes, of — could not have been done without hearing the Curés, had they been fixed inamovably in their several parishes. — In France a parish could not be changed without consent of the Curé. —

That the Defendt had a right to suspend the Plff whether amovable or not, from the offence he had committed 201. 202. Fevrier — The taking possn of the Cure, to which Plff had no right was a canonical offence —

Arrêt of 1702 would seem to confirm the Edit of 1679 & 1686 but the interpretation made thereon by the King, shews in what manner this ought to be understood — The exposé in the requête presented on that occasion is not to be taken as confirming the above Edit. —

The ordr 1664.

M. Lafontaine in answer—

As to the Art. 15 of Ordre of 1667, when the Council ord. this Ordre to apply to this Country, the Edit of 1679 had not been enacted therefore they dispensed this Artle because there were then no benefices in the Country — but when the King confirmed the P.V. of the Commissioners, as the Edit of 1679 had then been passed about a month before — the King directs this 15th Art. to be executed — quand le cas arrivera. —

b. 242

The first art. of Edit of 1679. directs, that the Curés who heretofore had been removable, should in future be considered as fixed & have a title to the dismes in the parish where they were appointed —

The ord. of 1686. was made without the consent of the Eccl. power & has been executed, & in same manner the Civil power had a right to enact Edit of 1679. —

The Clergy who presented a petition ag. the Edit of 1679 complained only of the reduction of the dismes — but did not say that the Edit was not in force —

The Curé when interdict can no longer possess his benefice — ought to be considered as vacant but this is not the case, he still remains the beneficier, & the Bishop must give him a Vicaire to do the duty for him —

The interest of Society has decided that the Curé shall be a public officer having civil rights to exercise as well as Spiritual he establishes the conditions of persons, by acts of baptism, marriage &c — & Society interested that he be permanent. —

That the Court ought to take cognizance of the Sentence of Suspension — as the Bishop ought not to interfere with the interest of the parishioners — the causes of suspension are here unreasonable —

Res ag. may set aside a Law of a private nature, but not of a public nature — in the case of a Curé of the habitans of the Cedars, Res ag. of a prescription of one year was set aside

additional authorities cited. —

Vo Benefice. N Denys. — p. 412. Benefice is a public charge — 414 — p. 418 — as to expressions ad nudum —

Henrion — p. 128 — 1d. p 172 — & p. 178. —

2 Rep. Vo Benefice. 273 — les simples Cures sont des benefices

6. Denys Vo Curé. —

Code Ecc. par Condé. p. 143. — & p. 108 —

p 263. Gouvernt des paroisses — as to Saints Rules 21 Pap. as to parish. —

3 Piales. p. 443 — as to the irremovability of Curé. —

1 vol 4to p 201. & p. 199 ne 295 traité

2 Vol — p. 242. of same work —

Mr. Mondelet in reply —

All the authorities cited in regard of benefices are inapplicable, there being no benefices in this Country — see the report of the Comrs on order of 1667. & the order of the King thereon —

This case found on wrong supposition of the irremovability of the Curés, but the 1 Journ. Aud. 888. & 8 — shews how to be applied — 856. 8

The Ordo of 1686 — refers only to Parishes where there are a Chapter or Curé primitif —

The Edit of 1679 has not determined any thing as to the irremovty but regards merely the dismes — as to the irremovbty it has enacted nothing positive

Said that Edit of 1699 confirmed that of 1679 — but it regards only the patronage of the Seigneurs —

The plffs letter, if founded on Edit 1679 — he must shew that he was fixed perpetual — if he founds on the letter he has produced, it does not support his demand —

The right of irremovability was introduced only in favor of Curés primitifs & Patrons ———

The only action the plff had here was to obtain a letter -.

The citation from Pithou is material to shew what the intention of the King was in regard of the Edict of 1679 - The letters patent of 1663 oct. 10 - referred to -

Fevret. Tr. des Cours souveraines - p. 8 - their case not favorable, as introduced as a particular dérogation in their case, & therefore never a private Thing a public right

The suspension cannot be judged of in this Court, it being matter of Eccl. Jurisdiction only —

Thursday 8th June.

Present

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

No 1419
Lewis & al
vs
Rutherford

On Defendr mo. that Pltff be held to ~~furnish~~ deliver a true copy of the declaration filed in this Cause –

No 587 & al
Ireddon
vs
Boyd & al
&
Rasco Intervt

In several Cases united –
On Intervention of Rasco for privilege on the monies arising from sale of Defts Effects –
Mr Mondelet for Rasco, states, that the Defendr was his lessee, & the effets sold were those which furnished the house leased – Defts gave a draft on Mr Rasco for the rent, who accepted it – but the monies were seized by other Creditors in the hands of Mr Young No 265. Pothr. Louage – prix est substitué à la chose – Repse – p 689. 690. Vo privilege. Pothr. Louage. No 259. – p. 372. Repse Vo Distribution – 1 Pigeau 682. 683. –

Mr McCord for Albert Furniss – a delay succeeded between the sale & the claim of the Oppt – was too late for his privilege cites. 17th art. of Coutr. p. 397. sec. 3 –

№ 2048.

Mead
v
Brown —

On action of account —

Mr. I. I. Day for Pltff. demand to obtain account of sundry goods sold by Defend. as Auctioneer —

Mr Hart for the Defend. Defend. has accounted & admits the delivery of the goods & sale of them — The Pltff. have admitted the correctness of the acct. — the only question is as to the rent for the use & occupation of a house claimed by ~~Pltff~~ Defts — refers to depns of Robt Woods — & other witnesses as to the quantum of rent. — The Pltff. had a lease of the premises from Mr Latour, but gave it up and a lease was thereupon made by Mr Latour to the Defts from March 1836 for four years — & as such lessees they claim the rent for the possession of Pltff retained of the premises. —

Mr Day in reply — objects to charge of 7½ p Cent instead of 5 p Cent as the usual allowance — Also the charge for Storage — The Pltff. never occupied the premises in question after Defts entered —

№ 1516.

Fabrique de Lachine
v
Roi & Lapensée

Merits on action of account —

Mr. Mondelet for Pltff — Deft. in default was condemned to account on the acct rendered; Débats de Compte were made — & Defend. called to make his contestations he made none — The Enquête was thereupon fixed. & the witnesses sworn — after this notice of Inscription on the merits this day — The Endorsement shews the Débats de Compte are well founded, & now demands Judgt thereon —

Mr. Nye objects to the whole proceedings as irregular

№ 1053
Orvis
vs
Waters

On merits -
Mr Day for Plff. action for £300 due on deck of Obligation -

Mr I. Day for Defendt - Various payts were made subsqt to the Obligation more than amount of thereof -

Mr Day objects to the evidence as inadmissible in every respect - The partnership concerns of Defdt cannot come in contemplation in this action. -

№ 644
Cheney
vs
Lehigh

Action on Guarantee -
Mr Day for Plff. The Defendt became responsible for the purchases made by the person recommended -

Mr Lipton for objects to 2d Purchase -

№ 2193
Neysmith
Jr.
vs
Jones

On merits - action of assumpsit -
Mr Jr. Pelletier for Plff states his demand & proves
Mr Hart for Defendt - The question here is whether the Court has jurisdiction in this Cause - The Plff paid for some tobacco purchased from me - by Defendt in order to have an action in this Court -

№ 2075
Cliff
vs
Delery
&
E contra

On merits of both demands -
Borton for Plff. action to recover money for building a mill for Defendt. Upon extra work - Plea - payment. It was therefore for Defendt to have made proof of this payt - but he has made no proof -

Mr

Mr. Mondelet for Defendr says. Plff had proof to make, & has made none — The Plea does not admit the demand — as to the Incidental demand no proof has been made —

No. 277.
Carter
vs
Lighthall

action on Promy Note —

Mr. Nye for Defendr The action is on a note note payable to order — not sufficient. —

No 2747.
Sol: General
vs
Slicer —

Mr. Nye for Defendr fears a nul. not prejudged no such bond as that stated in Interrogs filed

No 2058.
Rassette
&
Gauthier & al

action en redition de Compte —

Mr. Cherrier for Gauthier fyles his act — that as to one Campeault, nothing is proved

No 2099
Warwick & al
&
Dumont

Mr Bender — action ag Defendr for a Judgt obtd by pltffs ag father of Defendr — The father of Defendr made proposition of payt to his Creditors, wh were accepted, but never complied with by Mr Dumont

Mr Lafontaine for Defendr — The Contemnement of Defendr was conditional — it was ~~joint~~ obligatory only on the principal confirming it w/n one month, and on another

another person becoming jointly bound wt Defendt
The Defendt has pleaded this specially — proof has
been made — that this is not sufficient — There is a
ratification of Madame Dumont — but this ought to
have been stated in the Decler — The death of Mr Dumont
is not stated, whereas the obligation was binding only
on one Year after the death of Dumont — The
obligation is a personal & general oblign The Defft on
evidence —

Mr Bender for Plff — The declaration is sufficient
The obligation here is solidaire, & the Plff had his action
agt any of the Cautions —

No 404
Sharrade &c
v
Schneider &c

Action for assault on person of Plffs wife —

Mr Bender for Plff. The act of Defdt is of the most
atrocious kind, by going in the night time & taking Plffs
wife in the night & pouring pitch over her body —
That the Defendt must be considered as guilty, from the
evidence adduced, & from the kind of defence set up by the
Defendt & the evidence they have adduced —

Girod
Lapeyre.
Laporte.
=
Ricard
Daugerot
Pepin
=

No 2749.
The Sol. Genl
v
Slicer —

Mr Nye for Defendt contends there is no sufft
proof — Fact dont appear too late

No 489
Clarke
v
Bowron

action on note —

Nye for Defdt — The transfer under wch Plff sues does not
transfer the present note to Plff — 1st Count therefore must fail
on 2d Count — ~~Note~~ Indorsements are struck out & not diffr from that
declared on — Defendt not a merchant —

Friday 9th & Saturday 10th June, were Enquête-days.-

Monday 12th June

Present
Ch. Justice Reed
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Park v Handyside et al — On Plffs mo. that the Enquête be declared closed

Pothier v Foucher et al — Mo. to continue Interlocr

Reid v Johnson — Deffr mo. to discharge Inscription en Rob de Droit —
Mr. McCord for Deffr. The Enquête closed as Deffr without allowing a day for his writs according to Rule —
Mr Guy for Plff. The Enquête was regularly closed

Pearl v Tobin — Mr Guy's mo.

№ 569.
Guilbault
v
Beaupré
&
Bedard
mis en Cause

On rule on the mis en Cause —
Mr Hart for Defts — The mis en Cause has answered to the Interrogatories — Their answers are in contradiction wth his former allegations —

Mr Geoffrion for mis en Cause, relies on the answers made to the Interrogs —

№ 966.
Bruneau
v
Bender

on Defendr mo. to be permitted to fyle his plea

№ 962
Kennedy
vs
Kurozyn

action for work & labor for Loiner's work —
Mr. Meredith for Plff. The evidence offered not in writing p. 525. 2 Starkie. Ev. —

Mr Fisher for Defendt — The Statute of Frauds is introduced here only as a matter of evidence and affecting the validity of any Contract under the laws of the Country — & by these laws it is not necessary that any consideration should be stated in the agreement to render it binding The necessity of consideration arose out of the interpretation by the Courts of law of the word agreement —

But if the money here has been really paid to Lewis with the Consent of the Plff — it is quite enough — The debt of Lewis was due to Defendr — and he was — recommended to Defts — as a safe person to deal with, and the debt due to Defendr — owes wth Plffs consent — transferred to the Plffs account —

2 Comd. on Contracts. p. 41 — as to voluntary payts —
2 Poth. № 156 — Depositum de Cabaub — & when prescription

№ 1930

Benning
vs
Morin. -
& Pelletier par opposition
à mariage —

action Pff damages for sheep &c. &c. — animals destroyed by the Defendr dogs. —
Mr Driscoll for Pff details the circumstances
Mr Jas Scott for Defendr contends that the pff has failed in establishing the facts alleged —

№ 2185.

Moore
vs
Smith & al
& Flagg & al. T. S.
and
E contra

action for goods & effects advanced to Defendrs and for services rendered to them. —
Mr. J. Day for Pff states demand
Mr Taylor for Defendr plea 1st General issue and 2d payment of all the sums charged — and an Incidental demand — That the Pff here was acting merely as the agent of the Defendr and the action is wrongly brought — But the whole amount has been paid & much more — and the defendrs have established their Incidental demand of Pff —

№ 97.

Dominus Rex
vs
Jos. A. Gagnon dit
L'Hon. Jos. Masson
dit — Intervenant

On certiorari from the homologations &c
Pr Verbal —
Mr Gosselin for the Prosecution — The Justices rendered their Jugt out of Sessions, & the consent of the Advocates could not cure this Defect — The names of the Intervenants & opposans are not set out, & it is fatal —

The Gr. Voyr has not observed the necessary formalities — The certificate of publication at St Vincent de Paul is irregular — The witnesses being persons interested

interested — refers to the other reasons alleged as the P. V —

Mr Gray for the Gr. Voyer & Intervenés —

№ 1375.

Molson & al
v
Leishman

action for having carried away the goods effects of one Counteneye, to whom the late Mr Molson had leased a house, the said goods & effects constituting the gage of the said Molson. —

Mr Taylor for Plffs — states the circumstances of the case —

Mr S. Day for the Defdt — The evidence is insuffte — The lease to Counteneye is not proved — the depositions of the witnesses to prove the lease is informal and insufficient —

№ 1588.

Begly
v
Frechette
&
Garants

on merits of both demands. —

action on promy notes — of the maker by the Indorsee —

Mr Peltier for Defendt — Notes given to settle the balce of acct to Cartier & Begly — Notes given in Cartier's name alone — The Defendt failed, & got a letter of licence for 5 years from his Creditors — This letter of licence is not yet elapsed — The Defendt has put Cartier in suit as his garant of this action —

Cartier & other

The Plff is bound for the acts of Cartier here who was administering & acting for the partnership, & as such he had a right to make the remise in question —

Obl № 619
mandat № 165
Repertoire de Procédure
p. 712 № 8
4 Pardessus Dr. Com. pp 206
№ 1075. —
Poth. Société № 91 —

Mr Rossiter for Plff. The Defendt Cartier had no authority to make such a remise, the authority vested in him to wind up the business did not extend to his giving or long a delay as that of 5 years — That Cartier having taken the notes in his own name, and having indorsed them over to the Plff, Cartier has made the notes his own & has become responsible for them —

No 947.
Begley
vs: Cartier &
Eusebe Cartier

action on note — by indorsee agt ~~Drawer~~ & Indorsers

Mr Cartier — for Eusebe Cartier — pleads want of notice of payt when notes fell due — the Notary has not been able to prove the notice —

Mr Rossiter for Plff — Mr Griffin says he thinks that put the notice in the post office for St Hyacinthe — but the evidence of Raymond the clerk of Defdt has made up this defect —

No 698.
Gervais
&
Beaudry

on merits —

action for damages for breach of Contract —

Mr Ch. Monidelet for Plff. The parties intered into a joint Contract as partners in cutting logs to make plank & boards, in the parish of St Cesaire, but the Defendt stopt the work & discharged the hands on a supposition that the work would not be prosperous —

Mr J. Scott for Defendt The Plff did works to carry on the business, while Defendt had furnished $150 — and worked at the Chantier — The Plff on the contrary did nothing, left the Chantier

№ 817.

Gibeau. & Cardinal

Action for work & labor as a Mason—

Mr Rossiter for Defendt— The exception must hold between these parties, where parties are not traders, that the article of the Custom will apply— The circumstances of the Case shew that the oath ought to be refused to the Defdt—

Pelt & Stuart

№ 741

Shawbak vs DeRouville

Action on promy note

Mr Drummond for Defendt— has pleaded that the Pltffs have no quality to represent Jos. Jones. There is merely a deed of Assignment by Jones to his Creditors— This assignment is incomplete, as the Schedules referred to are not annexed—

That there is no legal indorsement on the note—

Pelt. Ob. № 740

Mr Andrews for Pltff— The deed of assignment has already been admitted as sufficient— cites case of Millar vs Fraser— where it was held that the indorsement may be filled up at any time—

Tuesday 13th June. —

Pres.
Ch. Justice Reid. —
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

Guay
vs
Ermatinger

Mr Day for Defend. moves that the Inscription of the Cause be dismd. as irregularly made —

Mr Guay opposes motion —

Bousquet
&
Lebert
&
Opp.

Motion of Plff to obtain monies levied on giving Security during discussion as to insolvency of Defts.

Mr Green opposes the motion — cites —
2 Bourg 545. Forum. vo Contribution

No 154
Pothier
vs
Foucher
&
Drouin mis en Cause

on Mr Cherrier's motion to prolong rule of Oct last for nomination of a practicien —

No 960.
Leslie
&
Middlemiss
&
Menedier opt.
&
Guay Intervt

On the opposition of Mr. Menedier —
Mr. Lafontaine for Opt. — at the sale, the Oppt. was last enchérisseur — There are 2 returns in one of Opt. the Sheriff says he did not proceed to the Sale — in 2d return the reasons of the Sheriff are given why he did not declare the Oppt. the

adjudicataire

adjudicataire — The oppt contends that the ~~oppte~~ Sheriff having sold the property to the oppt — the Sheriff is bound to give him the title —

Mr Gugy for the Intervs party — The law directs the Sheriff not to proceed to the sale where there is an oppn afin de charge —

No 244
Lauder
"
O'Sullivan
& Kennedy

action on promy note
Mr. David for Mr O'Sullivan, the note was granted conditionally by O'Sullivan to Kennedy wh knowledge of Pltff — p. 164. Chitty on bills —

Mr Griffin in answer, says — That all the answers of the Pltff on faits & articles shows that Defnds must be condemned

No 1567
Marteau
"
Reignier & ux

action on note —

Driscoll for ~~Pltff~~ Deft The note is mis-described in Declr nor does it state that note was presented at the place where payable Roscoe on bills. p. 149. — 264 Bailey. p. 25 — Glen on bills 164. Note No 3 —

Chitty 174. 583.

The note was indorsed after it became due, and Pltff stands in same situation as the Indorser — Chitty. 244 8th Edit — Bailey. p. 118 — Roscoe. pp. 152. 3 — The Indorser Pantaleon Cadieux ~~was indebted to Defdt~~ never gave any consideration for the note

Mr Cherrier for Pltff. The authorities cited are inapplicable — it is enough that Pltff shews a just demand agt the Defndt — The other facts alledged by Defndt have not been proved —

№ 2642.
Dufresne
vs
Cheseman

action en separation de biens — by default —

Mr Drummond for Pltff. states that evidence adduced is sufficient to establish the demand —

№ 673.
Grant
vs
Lapensée

on action for goods sold

Mr Nye for Defendt — on the exception as to the addition of the Defendt as an Esq — he has adduced evidence — and on the merits the proof is insufficient. —

№ 2446
Brewster et al
vs
Ferrie et al

Action as Defendts as Carriers —

Mr Moreau for Pltff. The exceptions pleaded by Defendts have been dismissed — on the merits the Defendts plead an arrangement with the Consignee of the goods — The goods were delivered at Napanee to the order of the pltffs — Has objected to the evidence of Taylor as an interested Wit who rec'd the goods, as an interested witness —

Mr Day for Defendts submits as to the sufficiency of the proof of the Contract — q. Merlin Dovité. p 169. That the Invoice in the hands of Taylor was sufficient evidence of his property as Consignee, & altho' Defdts rec'd. goods deliverable to order of Pltffs. Defendts had a right to consider Taylor as propr. — That Taylor is not an interested Wit in this Case 102.104. 108. 1 Starkie Ev. 1st. 118.119. — his interest in any Case is balanced interest

№2742.

Reid
vs
Johnson

action en Revendication for a Piano forté —
Mr Guy for Pltff — states case — & submits as to damages
The Defendt did not appear —

№855

Lacoste et al
vs
Fournier et al
&
Fournier Intervt

Mr. Mondelet for Pltff

Mr. Cherrier for Defendt — the action cannot be maintained, as it is in the name only of the agents of a portion of the parties interested — The clause in the Contract that the action might be brought in the name of the Pltffs alone does not vest in them the right of action as agents —

Mr Mondelet for Pltff refers to the Contract between the parties —

№168

Milligan
vs
Clarke et al

action on note —

Mr Guy for Mr Boston Atty of Defendt — The note was given only as a Collateral Security & not to be put in suit by Defendt but to account to Defendt for the amount of it — That in any case John Clarke should be discharged —

Wednesday 14th June.

Pres.t

Ch. Justice Reid
Mr Justice Pyke.
Mr Justice Rolland
Mr Justice Gale.

No 736.
Gambell
vs
Berthelet & al

Mr Goodard mo. to reject Defd.rs exception as the necessary fees have not been deposited at Office to defray the expense of discussion

Mr. Bender for Defend.rs not necessary to deposit any money in this case. the Pleff here having no executory title — mo. premature — dis.d —

obl. No 411. 413.

The Sol. Gen.l
vs
Slicer & al. —

} Mo. to open debt. — granted under the circumstances

pr. Nouv. Dem.t —
Kaunter. —
vs
Mc Kellop & al

} on mo. of Pleff to appoint a day in Vacation to ex. the Wit.s of the Poss.n —

Mr. Sewell for Defend.rs objects to another day being granted in a case of this kind. —

No 1074
De Rouville
vs
Meunier

and No 1588.
Lagarde. —
vs
Meunier

} action for Seigneurial rights —

Mr Perrault for Defend.rs contends that the act on of the Droits de Lods & Ventes is null, as the property sold did not belong to the Pleff Vendor, but belonged to

to minors — The Defendr can never become the proprietor of the land sold, nor be able to dispose thereof — It will require delay and certain formalities to be used to dispose of the property of minors — The Defendr therefore demands the resiliation of the act, or the necessary security aft the consummation of such sale —

The Defendr was led into error by the allegation that the deed of donation to the minors had been registered which on examn was found insufficient —

Pothr. Obl. Nr. 133. 135. — Nr. 14. Vente — The Vendor in any Case ought to be bound to the garantie. —

Vente. Nr. 325. — Lessonne, p. 264. 5 — on a contract null no droits de lods & ventes are due —

Mr Gosselin in answer — The Defendr have purchased under a sum. of all the circumstances, & on the obligation expressed that on the minor coming of age he would ratify the sale —

Nr. 719.
Cloutier
&
Monnette

} action en deed of sale —

Mr Dumas for Plff — Defr has tendered the money but contends he is entitled to security aft a certain Dower — The tender is not sufficient —

Mr Perrault for Defr — the only question is as to the sufficiency of the tender — That tender was made when the money became due & no interest had accrued — & afterwards when a demand was made —

Mr Dennis — denies that there is any evidence of the tender when the money became due —

№ 459
Drolet
&
Haude
&
Haude opp.t

Ord oppos.n afin d'annuller —
Mr Perrault for Opp.t The Vend: Exp.
was sued out irregularly, as all the
previous publications & notices had not
been made — & this appears from the return
of the Sheriff on the writ of the Lands —
refers to sec. 11. of Stat. of 1801 —
Mr Dumas for Plff

Thursday 15th June

Pres.t
Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale

On a petition from the Sheriff for changing
the terms of his office —

Stuart
vs
Stanley —

The Plff moves for an attachment of the Defd.t
on the grounds stated in the affidavit filed

№ 1292
Stuart &al
v
Christie &al

On mo. of Plffs. that certain persons be called to take up the instance in place of deceased Defendt.

Mr Stuart for Plff. the practice has always been to called upon the party by rule —

over till to morrow

№ 322
Fisher
v
Hibbard
&
Webb opt

On oppositn ments.

Mr David for opposts. The oppt. claims the land as his property — The lot of land was purchased by Defendt but at the dissolution of the partnership between Defendt & oppt this lot of land was transferred to the oppost — ~~but~~ together with all the property belonging to Defendt — and the lot has been in the possn of oppost since 1827 —

Mr Taylor for Plff. The parties dissolved their partnership, when Defendt declared his purchase to be made for the partnership & it was agreed to be transferred to oppt on condition of paying his debts — but Defdt continued in the possn of the lot of land — The sale of the lot was made by an agent who appears to have had no authority —

That Oppost was liable for the debt now demanded as being a partnership debt —

8 Pickering № 149. 502 to 524 —
Swanton 232. 5
№ 237. 241-244
Pothier Ob. № 4 —
N. Dunst v. Hyst № —

Mr David in answer —

№ 1974
Webb
v
Fisher
&
Contra

On Law —

Mr David for Plff. action on obligation —

Mr

Mr Taylor for Defendt. There had been a variety of transactions between the parties in this Cause —

Mr David for Pltff has demurred to the plea — and a plea of Compensation in this Case — nor can the Incidental demand be admitted here as having no connection with the principal demand —

Watts
vs
John R. Spooner

Damages for unskilful conduct of Defendt in his profession as dentist. —
C. Dvoz.t Vo Chirurgien. — Id. Vo Blessé —
Id. Vo Quasi-Delit — 2 Bourj.n p. 500. 501 —

Mr Boston for Defendt — No work was present during the operation complained of — no proof of want of Skill — mere accident to be attributed as much to the Pltff as to the Defendt
2 Domat. Lev.s tit. 17. Sec. 2. p. 129
1 Pothier. p. 247. in case of a mere cas fortuit — no action —

No. 1305.
Stuart dal
vs
Wilson
&
Garants

action petitoire — on law
Mr Day for Defendt — a double sale made of lots in question. No. 13 & 14 — first sale to Pltff dal & subsequent sale by Mrs Robertson & children to Defr in 1833 — There are 12 Counts in declr First Count first purchasers became joint tenants, & on the decease of one of the purchasers the survivor became sole propr — Stats other counts —
Has pleaded to these Counts. as to the 4.th & the 5.th Counts

he

has stated that they are ris off — as no title is set out wt the possession — &c

The questions now raised are on the defences au fond en droit —

By first 3 Counts the claim is set up by law of descent in England — but not known by the laws of this Province 6 Geo. 4. supported by 9 & 10 Wm. 4. ch 77 — & the Plffs therefore cannot recover under these Counts —

That even according to the law of England the plffs are not right on their claim — refers to the peculiar terms of the Deed of Sale of 1804 — This Deed by laws of England is no conveyance of property — by Common law, a public seizin is requisite of possession — In 27 Hen. 8 — This livery of seizin was altered by an act of transferring uses into possn — by deed of Bargain & Sale — In 27 Hen. 8. ch. 16 — the effect of previous stat. was restricted by requiring an Involment of the Deed in 6 months in the County where the lands are situated another innovation was made afterwards of Lease & Release. 2 Bl. Com. 305. Deed of Bargain & Sale should be sealed & enrolled —

2 Com. Dig. Vo Bargain & Sale —

It must appear on the pleadings that these formalities have been observed — Arch Bob Digest of Pleads & Evidence p 136 — as to mode of pleading & setting out a Bargain & Sale — 2 Com. Dig. Vo Bargain & Sale (B 12). how a bargain & sale shall be pleaded — to shew in what Court enrolled — Com. Dig. Vo Fait 2) —

In this declr there is nothing said of a Deed sealed & enrolled therefore would be no seizin as alledged

A power of attorney to convey lands is a Deed and must be sealed 2 Black. Com. 296. — 2 Burg Rep. 1013. p 1085. 2 Cruise Dig. Cok. Litt. b. 52. a)

There is no allegation that this deed has been registered under the Provincial Statutes — compares Repeal Act to Stat. 27 Hen. 8. ch. 16 and the same strictness required for setting out & completing the title of the party —

As to 4th. & 5 Counts

are more ambiguous than the the three first — whether on laws of France or England — By laws of France by 113th art. of the Custom Paris — that only a title of presumption of 20 years, & it is necessary that title must be set out according to this article without wh. the title is incomplete and under English law there is no title by presumption to real Estate by poss. of 20 years — 2 Bl. Com. 2 Vol 124 Archbold on pleads — 3 Chitty Dig. p. 480. 481 —

7. 8 - 9. 10. 11. & 12th. Counts —

The presumption is dated back from the title of Defts in 10. 20 & 30 years — & stated to have been in the Plff since their marriage, & on their predecessors prior thereto to make up the period of possession — That if this was the property acquired by presumption it was acquired by Js. Stuart & his wife, & not by his wife alone, as a Community must be presumed

Mr Cherrier of Counsel for Defendt The accumulation of actions is admitted as an Exception peremptoire — such as here stated — every Count ought to shew a right of action, & correspond with the — Conclusions demanded — The mode of accumulating demands or Counts are of English Counts — ought all to be consistent, but are unknown in the French Law — Takes 4th Count in decln where presumption of 10 & 20 years without title is claimed — but according to Coutumes this presumption is wholly unknown 2. Gp. Com. p. 337. on art. 113. — There is also another omission. as to possession by predecessors, there ought to have been named

The 4 & 5 Counts are contradictory — the one alledges a possession by the predecessors of Plff for 20 years, the other alledges possession by themselves for that space of time things contradictory

as

as to 6th Count — when prescription of 30 years without title is allowed, but without coming within the requirements of the 118th art. of the Custom — The action pétitoire cannot be — maintained on a prescription trentenaire without title — altho' Defendt may set up his defence on that principle —

2 Bourg. p. 116

That 7 & 8th Counts are also contradictory — so also the 8th & 9th Counts —

The Defendt sets up a later title with tradition, to that of the Plffs — of tradition is effective to give a good title —

Poth. Vente N° 319
16 Duranton. p. 18.
20 Troplong p. 52. 60.

Const. till to morrow for Mr Stuarts answer —

Atty

Friday 16th June.

Pres.

Ch. Justice Reid —
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale. —

Kennedy vs Annesley — On Mr McCords mo to reject Defendts pleas as irregular and inconsistent, & sets up a conditional pleading

Mason & Brown 13 d. 34

Brunneau & St. Onge vs Donegani Intervt — On Mr Brunneau's motion

Mr Perrault claims a right to have an expertise

Collins vs Drysdale — On Rule aft. the Sheriff for not returning writ of Fi. fa.

Mr Bleury for Sheriff. The return was ready as soon as the bailiff had made his return — This bailiff was employed by Plffs attys — the Sheriffs fees have not been pd. being 7/6 —

No 1305.
Stuart &c
vs
Wilson & als &c
&
Garants

Mr Stuart in answer – states the facts of his Case – The Lands in question were sold by Lieut Col. Robertson to P. Robertson in pay.t of a debt he owed to the mercantile House of Robertson & Co – on 15 Oct 1804 – & from that period the present Pltffs possessed by their representatives the whole lot down to the time of the passing the Deed of sale to the Defendts. This sale by Defendts was made on the supposition that as the Deed of the Pltffs had not been enregistred therein the latter was of no avail & gave Defendt a right to claim the property and make a new sale thereof –

The letter of 15 Oct 1804 to Robertson & Desrivieres as to the manner of pass.n This conveyance as to this was said would render the purchasers joint tenants ~~in common~~ by y.r the Survivor wd be entitled to the whole –

2 Count adduces the right of Pltffs on the above principle

3 count – as Deed of sale as to the quantity of Lands – it might be considered as establishg a right of one third to each of Pallk R – & the 2 minor children 1/3 each – & him also the survivors wd be entitled to the whole.

The other 4 Counts rely and the title by prescription – This is owing to the uncertainty of the Law on the subject of Lands thus situated – accords to the Tenure: and the rules of Law in England would apply –

4.e Count – a poss.n of 20 years according to the English Stat. of limitations – the rule under the common Law is not so clearly established 2 Saunders Reps. p. 175. a 20 years poss.n suffl to maintain an action to recover an Estate – 2 Salk. Rep. Stokes v Bury –

5. Count. poss.n in pltffs & their predecessors –

6 count – poss.n of Pltffs alone for 30 years

7 Count on French prescription of 40 years

8 Do – on Do – Do – of 20 do

9th Count – on poss. of 20 years & their predecessors –
10 do – on poss. of Pltffs alone
11 – do –
12 do –

The Issues on these Counts are under prescription exceps. def. on droit &c

The first exceps. is to the 4th Count – objects, that tho the Count does not state a juste titre, & bonne foi – this not necessary under the English Law –

The 2d exceps. that Pltffs. title not set out – this not required in cases of prescription either by Law of France or England

The 3d exceps. to 5th Count – not applicable for same reason

The next exceps. is to the 5th & 6th Counts. as being inconsistent & contradictory – The 6th Count is for an English prescription

In 7 & 8th Counts – obs. to be contradictory

In 9 & 10th – do – same ground –

The defenses au fond en droit are unnecessary, are same as the exceptions en droit, & different only in name –

The 15th 16. 17. & 18 pleas of just exceps. – are the only material pleas which call the attention of Pltffs & the Court – these regard the right of property being vested in the ~~Defendts~~ Vicomte of Rotterdam at the time they made a sale to Defendts –

The Pltffs have made one answer to the first ten exceptions a Replication to the defenses au fond en droit – Thus demurred to the 15. 16. 17 & 18 pleas of Defendts

That when a subsequent title has been enregistered it cannot prevail over an prior title, when the subsequent title was so enregistered knowing the existence of the prior title – But Pltffs having enregistered as soon as they returned to the Country, & as soon as they could do, there can be no benefit allowed to operate as the Pltffs in favor of others who have done greater diligence

As to the objections to the 3 first counts –
The form of Pltffs title under deed of 15 Oct 1804 not

not being a title according to the English forms —
But this Court has always observed the French forms
for titles to all lands, especially in 1804 — This point
is also established in the other Courts of the Country —
The Fr. Law was never abrogated in the Country, &
the reserve as to Lands in Free & Comm. Soccage by Stat.
1774. may regard what is considered the public law
but not as to the private rights — The Proclm of 1763
did not abrogate Fr. Law & introduce English Law
but held out certain assurances to Emigrants, of the
benefit of the English Law — The Commissions creating
Courts of Justice were to be governed according to Laws
& Usages & Equity — There was an ordinance of the
Legislative Council of 1764 — gave an authority to
which they were not competent — The authority
of Attys & Sol. Genl on the subject that Fr. Law
was never abrogated in Canada — See Sir Wm
Grant's opinion in 2 Marriott's Repo. pp. 143. 157. 8 —
It is therefore evident that the French law always
prevailed in the Country —

2 Marriott 143 157 158

Cases in the Courts — are conformable —

Wright & Sparks

refers to 9th 10th Geo. 4 — Sec. 1. is express in support
of the validity of titles of this description —

The want of allegation in the Declaration of the Plff's
titles not having been enregistered — refers to 1 & 2 Wm. 4
Ch. 3. sees it regards only subsequent purchasers for
a valuable consideration —

The objection that English law in regard of descent
is claimed, or whereas the French laws govern — but
in regard of Conveyance of 1804, vested rights have
been established — The Stat. Limites act contains no
clause by wh persons having acquired rights before

that

that law, should be divested of those rights — a bill to infer the invalidity of the rights acquired under the deeds in Fr. form —

That had the title of 1804 never been made, yet under the English law, the prescriptions claimed are sufficient to give a right of property — Even the Fr. prescrip. of 10 years w.t a defective title gives a right of property —

The answer to the objections to the English is, that the objections are made under the French law — & do not apply, — as the same principle does not hold —

The obj.n under the Fr. prescriptions, that the persons in whose right the Pltffs claimed were not stated so as to complete the term of prescription — but the concise mode of pleading by the French practice would admit the mode pleaded by Pltffs in their declaration —

It has been stated that these Counts are contradictory & repugnant — if there be repugnant statements in the particular Count, the objection might apply — but the Defendt cannot set up one Count as against another — Stephen on pleads. p. 420 — 314. 315 — 321. 323 —

As to the demurrer of Pltffs to 15. 16. 17. & 18th pleas of Defendt — in regard of the non registration of the deeds — answer — that is no law requiring registration of Pltffs title 1804 — 2d and any act requiring such registration had been made it would be contrary to natural right & reason — & 3d — it ought at all events to induce the Court to give a favourable interpretation of the law — This law of Registration is without precedent, to make a law to destroy existing rights — it at most could be a prospective law as to deeds made in future — We ought to look to the nature of Registry acts in England in France & the States to see their purposes & regulations

which

2 Geo. ch. 4. 5 & 35 ch. — 7 An. ch. 20 —
Stat. U.C. 36 Geo. ch. 5. & 61 — Grenada law. regular
office —

The 10 & 11. Geo. 4. ch. 8 — establishes Registry Offices
in the Eastern Townships — it requires all incumbrances
to be enregistered in 12 months, altho' militating agt
vested rights, yet does not militate to a total exclusion
of the right — in regard of the right of property by deeds
of sale, this law is perfectly right. —

The Stat. 1 Wm 4. ch. 3 in wh the objectionable
clauses are to be found. — it is a monstrous injustice —
but its operation is limited to particular Counties —
The 3d clause extends the provisions to the Ottawa
County, but the wording of this clause does not say
that the new clauses introduced are made to apply
to the 3 new Counties, but the general provisions of
the act of 10 & 11 Wm 4. ch. 8. which are amended
and which are perfectly reasonable — such interpretation
ought to be received in case of such enormous act
of injustice — The 4th clause is also specially pleaded
by Defendts as affecting the right of Plff — but
this clause was intended to apply merely to —
incumbrances, & is taken from the Stat. 10 & 11. Wm
4th — The 10 & 11 Wm 4. ch. 3. is very particular as to
the number of words & manner by wh property could
be acquired — whereas in the 4th sec the word only
Conveyance is the only word which is used to comprehend
the Conveyance of Real Estate — If the 4th art. is to
be enforced it would affect also the Letters Patent of
the Crown — whereas in other parts there letters patent
are excepted — But the word conveyance may be
made to apply to Mortgages given as a Security for a debt
by the English form, wh is a Conditional Conveyance of the

property

property to the Grantee a Mortgage —

Refers to decisions upon laws contrary to Jerrard right
Lord Coke. 8. Coke Rep. Bonner's Case —
10 Mod. Rep. 115 — 12. Mod. 687 — City of London v.
Hobart Rep. 86. 6. 7. Day v Savage —
1 Kents Com. — Merlin Rep. v. Effet retroactif 552 —
2. Devarris. 642. 3

Mr. Day in reply — Considers that the Court is bound on this hearing to adjudge upon the rights of the parties on the objections now raised —

Defendts have objected to the 3 first counts, as tending to establish the Pltffs right under the laws of England. The Defts has avowed touching upon sealing & enrolling the deed, as necessary by laws of England — Defts counsel admits that the Deed of 1804 is good only under the French law — It is impossible that Pltffs rights are to supported & determined partly by English & partly by French law — The private contract between parties may subsist, but still the Parl. of Mother Country may modify the mode & manner of securing those rights — but in 1804. the Laws of England were binding here — refers to Stewart. Rep. p. 434 —
9 & 10. Geo. 4. ch. 77 — whether law or not Pltffs. action must fail —
There is no such thing as acquiring title to corporeal hereditaments in England by prescription Stat. 21 Jac. 1. ch. 16 — refers to this — & the Stat. of Limitations goes no further — 3 Cruise. Dig. ps. 480. 481 — nor by the laws of France can a title be acquired by prescription agt a person in possession —
As to Demurrer of Pltff as to question of registration —
The first point taken up by Pltffs. is that there is no such law as that recognized by Defts —
2 Geo. 4. 1. Wm 4. ch 3. There may be something ambiguous in it — Does not extend to 3 new Counties — & the same objection may

may be applied to the 3d. Sec — but there can be no doubt as to the intention of the Legislature — but the 4th Sec contains all that is necessary for Defdt. is to be found — The conveyance of Lands is there plainly expressed —

Dwarris. 646 gives the reason pro & con. as to the opinions of Judges on Statutes bearing hard on rights of parties —

The law here is one of public policy, & calls on parties having lands in a particular County to register their letters in that County — This was no hardship and was in the power of every one to comply with —

Dwarris. 677

The answer to Defendt. 14th. pleading in answer to Plffs. Deeds — touching the absence of Plffs. at the time the law of Encumbrances went into operation — but the absence of Plffs. is not established as any cause of non-compliance with the law — The rights allowed to absentees is a particular privilege granted in particular cases — but party must bring himself within the exception —

The knowledge of a letter in the Plffs. at time Defendts purchased, is no sufficient ground to bind Plffs. 4 Cruise p. 505 — Dwarris — No notice can be allowed to set aside an act of Registration — 5 Merlin Quest. Dr. p 335. Vo Transcription au Bureau des Hypo. 3d Sec —

Saturday 17th June

Prest

Ch. Justice Rem.
Mr Justice Pyke.
Mr Justice Rolland.
Mr Justice Gale.

No 2716.
Ex parte.
Archambault
Val-

Mr Cherrier for Plff. moves to reject the return to the writ of Mandamus, and that a peremptory writ do issue - That the return is defective, and raises no point upon which - have not been already discussed, except as to the ~~nomination~~ election of Magistrates ~~has~~ made by the parish at large is contrary to the general usage of the Diocese - That as to the parish not being civilly erected - but in this respect the return is contradictory -

Mr Pelletier in answer - Defendts have raised the question whether the general usage of the Diocese ought not to prevail over the particular usage of any parish - usage constitutes the law in this matter - By the answers of the Curés to the questions proposed to them by the House of Assembly it appears what the general usage was -
As 1. Tellier Js. 126. No 159. & seq. Merlin
opposé au Decr. Jean Defumb. p. 549. 1re Col - Repre de Merlin
Vo Usage 320. & seq. Dict. Droit Revocation de Testam
Durand de Maillane Vo Coutume. 280. 282. & Dagueseau
t. 46. 447. -

Mr Cherrier - the general usage cannot prevail of the usage of a particular parish - refers to his authorities -

Hall
-
Bradbury

} on Mr Driscoll moves to reject certain pleadings filed by the Defendt as being contradictory & inconsistent - cites Marteau v Reizner -

Mr Meredith for Defendt

Wm Scott
vs
DeBillefeuille
et al
&
appos[ts]

On mo. by appts for delay to file their moyens d'opposition

Kountz —
vs
McKillop et al

Mr Sweeny's mo. that Mr Phillips be held to answer over to the 14th Inst.

No. 154.
Pothier
vs
Foucheroux

on motion of Marie Marguerite Foretier that the Interlocutory Judgt of the 20th October last as to her as Universal legatee be rescinded & set aside — and motion of Simon H. Durocher that Hon. J. Pothier do name a practicien —

Mr Stuart for the applicant. Marie Marg[te] Foretier The Defend[ts] here ought to have proceeded by an action to obtain the restitution of the Estate they here claim — by stating that claim by a regular demand — & this under 27th Sec of the Indication act

The party demanding a provisional Judgt must be a plff before the Court — Repn Merlin. Vo. Provision —

There is no particular application from Durocher to obtain the provision, but a general application from all the Defend[ts]

That at the time of this application Mr Durocher had made over his right & interest in the property in question to one Beaubien, for a certain annuity —

Mr Vigé. in person — resisted the motion

Mr Cherrier for Durocher

No 633
Leclaire
vs
Leclaire
& Frigo. oppt
&
Brierdal
mis en Cause

Plff demands that title be declared absolute
as regards the heirs who have not renounced

No 69.
McColl
vs
McDonell
&
Sicard dal
oppt

Mr Boston
On Plff's motion that the opposition be dismissed
for want of moyens
Mr Hart for oppost says there is no such cause
as that in ct he rec'd notice, before the Court —

No 1441
Driscoll
vs
Wilson
Wilson opt

Mr Boston for oppt — claims a privilege
on the monies levied — being for monies paid
for funeral expences & other necessary charges —
Mr Coffin for Plff — being in default to plead
was read — Question whether the payt by oppt of these
debts vests in him a right to claim the privilege of the
Creditor — Renusson Subn — p. 1. Traité — also. 3 ch. p. 18 —
art. 50 & 9 —
Mr Boston in reply — a stranger paying these debts
would have a right to claim the reimbursement of them —
Ch. 3. No. 28 — & p. 274. 276. 4th Edit —

No 1266
Ch. Perry dal
vs
Desperance

Mr Cherrier for Defdt no proof of the death of
one of the parties —
Mr Walker — The Defdt has not pleaded as
the quality of parties

№870

Gregg
vs
Ermatinger

£4105.

} action of amounts —

Gregg for Pltff — £1675 is acknowledged to be due — other sums are also admitted There is a sum of £50 — established by Pltff — Then is £191 — for interest charged by the ~~Defendt~~ Pltff as monies applied by Perry to his own use — Mey 6 Luther 281 — The sum of £105 — It appears by an act filed by Defendr dated 12 febr 1833. shews that Perry had not pd. the amount entered in the Sheriffs Book, as he afterwards borrowed the sum of £4000 from Pltff

Mr. Day for Defdt — as to £50 — admits it — action is a common action of assumpsit & not mandat — as to £105 — nothing to shew that Perry was ever indebted to Pltff in the sum £4000 — The receipt in the Officials book is a proof of the offer — The oblgn for £4000 — is in the private capacity of Perry — The Sheriff returned that he had rec'd the money — Mr Gregg — The Pltff has established that Perry was the mandatarie of Pltff — as such he is liable — The balce of £105 was never paid —

Forsier
vs
Trouillet
&
Trouillet opt

} Mr Bender for Oppt — contends that he has paid the amount of Pltffs demand by receipts filed but Pltff has called up the clerks of Pltff to shew these receipts were wrong dated

Mr Jerrows for Pltff — has admitted all the receipts filed —

Cummings
vs
Baird
&
White mis en Cause

} on Rule for folle enchere

Mr Sexton for mis en Cause — has established by affidavits that the property sold does not correspond with that advertisement —

No 736
Gambell
vs
Berthelet
et al

Page 187.

No 411. —
Ofl. No 413.

Action on an obligation — on Law —

Mr Godard for Plff — Defend — has pleaded the exception of discussion; but has not described the property nor tendered money to make the discussion

Mr Bender for the Caution — claims the discussion is not bound to give money for the discussion until demanded — Plff bound to discuss the property in the poss^n of the Defend^r — but as to the other property of the Defend^r of which the Creditor may not be presumed to know, the Caution is bound to advance money for the discussion

Monday 19th June.

Pres.

Ch. Justice Reid
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale.

No 1226. Russel & al v Guy.	Action dismissed – evidence insufficient
No 375. Froste & al v Smith & al.	Judgt for Plffs except as to Mrs Smith.
No 1136 Glackmeyer v Platt & al.	Judgt for Plff. £25 – damages.
No 2048. Mead & al v Brown	Judgt for Plffs
No 1053 Orvis v Waters	Judgt for Plff
No 2515 Cliff Delery & Contra	Both demands dismissed
No 2099. Warwick & al v Dumont	Judgt for Plffs

No 489. Clarke vs Bowron.	Action dismissed – Indorsement on note in blank
No 817 Gibeau – vs Cardinal	Judgt for Plff – plea of prescription over-ruled Dissts Mr Justice Rolland. –
No 97. Dom. Rex. vs J.A. Gagnon & al. Justices	B Verbal of Gr. Voyr confirmed. –
No 569. Guilbault. vs Beauprés. & Bedard, mis en Cause –	Rule agt – Mr Bedard dischd but without costs. –
No 154 Pothier vs Foucher & al	Motion of Madame Barron to rescind the Interlocutory order of 20 Oct last rejected – Order for appointment of practiciens granted
No 714 Wright & al vs Harvey & al	Judgt for Plffs –
No 1917 Ewing vs Gardener & al & Todd. T. S.	Judgt for Plff – contestation of decln of T. Saisi dismissed
No 2450. Roi vs Laberge –	Judgt for Plff

Tuesday 20th June 1837.

Pres.
Ch. Justice Reid.
Mr Justice Pyke
Mr Justice Gale.

No 741.
Shaw et al
vs
De Rouville
— Judgt dismissg action — Indoresment not filled up.

Bousquet
vs
Lebert.
Opsts
— Motion to obtain payt of monies levied during contest as to the solvency of the Defendr — rejected — The Court being of opinion principally that this Course was not to be adopted where the sum was so small.

No 960.
Leslie
vs
Middlemiss
& Menechir — oppt
Guys — Intervs
— Opposition of Menechir dismissed —

No 855.
Lacoste et al
vs
Fournier et al
& Fournier Intervs
— Judgt for Plffs

No 1074
De Rouville
vs
Meunier
— Judgt for Plff

No 1588.
Lagarde
vs
Meunier
— Judgt for Plff.

October Term 1837.

Monday 2.d October.

Pres.t—

Ch. Justice Reid
Mr. Justice Pyke
Mr Justice Rolland

No. 25—
Paris & al
vs
Ephraim
Hitchcock. T. S

Mr Coffin moves to be permitted to give security for Costs on behalf of Plffs.—
Mr. Nye for Defend.r The Cause has been dismissed from want of security.—

No. 69.
Mc Coll
vs
Mc Donell
Mc Donell opp.t

On plff.s mv. to dismiss opposition for want of moyens—
Mr. Green for Appt. is ready to Fyle his moyens—

No 1510
Cassidy
vs
Isabella Cameron
et al.—

On Law
Mr Driscoll for ~~Plffs~~ Defend.rs Cameron—
The conclusion in Law is of the two remaining Legatees, & not of the residuary Legatees by substitution who are not brot into the action—

№ 1687
Sanford & al
vs
McFarlane

On Law—

Mr Driscoll for Pltff has demurred to the plea as irregular & inconsistent.—

№ 2359
Trigannne
vs
Hinault & al

On Law—

Driscoll for Pltff has excepted to Defts plea as he contends that the sum demanded is not due on Pltffs debt—

Mr. Perrault for Defendt— The sale was conditional & set out the contract as such— Parties must go to evidence—

Tuesday 3d October

Present

All the Judges

No 868.

Quigley
vs
Ermatinger

On Pltff's mo. to revise the opinion of Judge in vacation touching points in evidence —

Mr Quigley for Pltff — The first question, is touching the producing certain letters put on the record by the Defendt at the Enquete — & Pltffs mo. to strike them from the Record the wits are Jas. Torrance, Wm. Ball & Mr Badgley — who prove the above letters, whose depositions he moves to reject. — These letters have no reference to the matters in contest — letters written by a person no party in the Cause —

Objects also — That the Defendt having consented to abandon his negative part of his plea, cannot now be admitted to make any proof touching the same —

Mr Day for the Defendt — The letters in question were filed in the regular course of the plea — As to their not being written by the Pltff — but it is apparent that they were written by a person acting on behalf of the pltff as his agent. The signature to these letters might be proved by any person besides the writer —

Moves for a reversal of Judgt of the Judge rejecting the evidence touching these letters —

The Plea of Defendt — cannot be divided — he admits that he received — but says also, that he paid so that he so received as the agent of the Pltff & that the books of acct kept by Defendt are in the possession of the Pltff — The Defendt contends that he has a right to shew he acted under the eye & authority of the Pltff & cannot be bound to render any account such as demanded —

№ 504.
Davis — vs — Campbell

action on Promy note

Driscoll for Defendt — note is promissory payable to order but made by a person not a Merchtt — but an Esquire — his signature is proved only by one witness, qr is not sufficient, as this cannot be considered a Commercial transaction. —

№ 419
Hall — vs — Bradbury
Sal

On Law

Mr Mondelet for Defendt — action on a bon en faveur of Bethune & by him indorsed after due the plea is to the first Count in the declr — by which it is alledged that a delay for payt was given to Defendt

The bon is endorsed only by the signature of the payee — this is not sufficient to transfer this bon without a special indorsement — the Statute does not recognize such transfer, but when made on a promissory note —

Mr Driscoll for Pltff, the Bon is payable to N. Bethune or order, & Defendt bound by this obligtn to pay to this order — This bon is a promissory Note & transferable by endorsement in the same manner as a promy note —

Chitty on bills. ps. 146. 148. 149 — 8th Edit. —
Bayley — p. 4. 4th Edit. —
Roscoe. p. 17.
Pardessus. ps. 21. —
Glen on bills. p. 31. —

№ 1599
Farrel dup — vs — Pridham & Gray. Gart

action Pétitoire. — Merits.

Walker for Pltffs — action to recover a certain lot of ground in the township of Grenville. № 8 in 2d range — limits his demand to one half of the lot, the surviving Sister being intitled to the other half

Mr Driscoll for ~~Defend~~ the Grant — There is reason to believe that the late Mary Grant made over all her right in the lot in question to the late Mr McMillan — and produces a power of attr from this woman to Finlay Fisher to transfer her right in this lot to Mr McMillan. —

The evidence of the Letters patent is insufficient, being merely the Certificate of Mr D. Daly, the Prov.l Secretary — These letters were filed only at a time when the Cause was improperly fixed for the Enquete which was afterwards set aside — There is besides no proof of the existence of the marriage between the Pltffs — There is no proof of the death of Mary Grant, in whose right the pltff claim — objects to the insufficiency of execution & return of the Comrs Rogatoire —

Mr Walker for Pltff — action brot by the late Mrs Grant never presented to the Court as handed to him admits that the certificate of marriage of the pltffs & the Letters patent were not filed at the time regd but the Defendt have not put in issue the quality of the pltff — the Interrogatories proposed to pltff admit that character — It is in proof that no registers were kept at Glengary when Mary Grant died, but her death is sufficiently ascertained by other evidence — The return of the Comrs Rogrs is sufficient & regular —

Wednesday 4th. October.—

Pres.
All the Judges.—

McCallum vs Smith — On Defr mo. to quash Writ of attachment — as service of process was made at last domicile of Defr
Mr. I. Day for Defendr the service is regular —

Hart vs Valentine et al — Defendr mo. for delay to plead —
Mr Judah for Pltff objects —

Gregg vs Guy — Defr mo. for a detailed acct.
Mr Gregg for Pltff objects, that statement is sufft as containing items already before the Court on the returns made by him, & qr were under the rules & control of the Defendr as the advocate in the Cause —

O'Hara vs Thauvette & St Denis opt. — On Pltffs mo. to dismiss the opposition for want of moyens —
Mr Buchanan for opport. The notice to fyle moyens is not in the usual manner, being that Pltff will proceed ex parte — & before the Pltff did so proceed the moyens were filed. —

No. 1292.
Stuart dit vs Christie et al — On Pltffs mo. to forclose Defendr from making a renonciation to the Succession of the late Mrs
Mr Buchanan for Pltff — a renonciation comes too late — as now offered — ordr. vr tab. art. 4.45. — 1 Pigeau 347. 8 —

N° 1003
Mallet & al
vs
Caron fils
and
N° 1005
Mallet & al
vs
Doré

action for amount of a repartition for the repairs of a Church.—

Me Chas Mondelet for the pltffs— The first plea here was a dilatory exception— this exception was dismissed.— The next exception that the parish of Chateauguai was not civilly erected, or by legal authority— The next exception is of the proceedings of Mr. Marcoux the Deputy of the Bishop— The Defds further plead the irregularity of the proceedings before the Commissioners.—

As to the exception of the legal existence of the parish of Chateauguai, it may be questionable how far the Court has jurisdiction over this question, but it is enough that there is in fact such a parish, and the Bishop has proceeded as well as the Commissioners have proceeded, & they had the authority of the Intendant and Governor of the Province under the French dominion by the Ordre of 1791.— Louis. Cour. des par. p. 1. c 2.— Repre tom 12. p. 605— vo Paroisse— But the Defendts themselves in the moyens d'opposn filed before the Commissioners state themselves proprietors of lands in the parish of Chateauguai.—

Me Bureau for Defendts— as to legal erection of the parish of Chateauguai, nothing has been proved— nor has any thing been acknowledged by the Defendts which can be considered as establishing the legal existence of the parish.— The legal erection of the parish can alone give jurisdiction to this Court— The basis of this action is wanting there is no repartition such as stated is not before the Court, that produced has no date, is variant from that said to have been homologated by the Commissioners— Has moved to reject the testimony adduced at the Enquete as the witnesses are interested— But

Mr Mondelet in reply. cites Merlin Repn. vo Date § 4 — 1. Pars. Nots. p. 53 — as to necessity of a date —

No 870.
Gugy —
vs
Perry —

Action of assumpsit.

Mr Gugy for Pltff — refers to exh. No 1. July 1837 — qt. is a general act — there is another chapter — The only question is now as to the extent demanded — The pltff contends that when agent applies monies of his principal to his own use, he must pay interest cites 6. Toullier p. 280 — Domat. p. 237. — sec. 8. — 1 Despeisses 171. — 4. ht. Du Mandement — Lacombe. vo Pro curieur — The Defendt was a deputy of Pltff, on a Salary — he drew the several sums from the Bank beyond his Salary —

Mr Day for Defdt — no interest can be allowed but from the day of demand — The Pltff has not brot himself within the authorities cited — 18 Duranton. p. 252 — where there is no bad faith in the Defendt — here — the employ of the monies so drawn by the Defendt for his own use has not been proved — There is no proof that the Defendt received this money as an agent — nor the presumption is it was wt the consent of the pltff as Defendt was acting in the same office under the eye & notice of Pltff — The demand here is not for having [illegible] monies of Pltff & applied them to his own use —

This action is merely for the balance of acct when interest is due only after Demeure — Merlin Sec. 4. No 13. Vo Interets — No 56. Pothier Mandat —

Thursday 5th October.

Pres.t

The Chief Justice -
Mr Justice Pyke
Mr Justice Rolland
Mr Justice Gale. -

No 2245
Sands &c
v
Bowman &c

The Defendrs mve for a new trial -

Mr Fisher for Defendr - In this cause, a double sett of depositions was taken under the Com: Rogr which were found to be different & contradictory to each other - in one sett there were several erasures and interlineations wch are not to be found in the other - the latter part of the Interrog - different between the two -

Mr Buchanan for Pffs - contends that the Commission has been correctly executed - In this case there was a double commission, wch the Defendr had an interest

No 1473
M.donald &c
v
Young &c

Mr Walker for Defendr - moves to set aside the order made for closing the Enquete - Three were objections raised on the right of Defendr - wch remained, namely the consent of the Pffs. to accede to a deed of Composition between Defr & his creditors, & the accept.e of Pffs of monies pd them thereon - The evidence offered was legal & of a Commercial nature - ord. 13 & 14. 12.n title of Ordr of 1673, shews Interp.n Consulaire p. 20 & 21. - Id. 419 - this Supr Consulaire, had authority in such cases - Id. p. 656 - Denizt vo Contrat. No. 11. - Repr vo Consul. p. 539. 561 Barnier ordr 1673. art. 2. tit. 12. - Toubeau 724 & 726 -

Starkie Ev. 1002 — where verbal evidence may be admitted. 2d p. 1054 — 11 East. 290. — where security is given for the payt. of a lesser sum. —
2 T. Rep. 224 — where parol agreement admitted —
Starkie. p. 26

Mr Judah for Plff. The authorities do not apply to the situation of the Defendt — The fact to be proved by the writ. was not shewn to be of a commercial nature — There was nothing in the question proposed to shew a fact of a Commercial debt. The Court, Mr Justice Rolland observed, that this being a remise of a debt, & not a commercial fact —

Walker in reply, the partial or effectual payt of a debt is clearly commercial, & the question here is of that nature. —

No 327
Clarke
vs
Cuvier

action for damages —

Dorion for Plff. Damages here claimed arise from the mis-usage of property of Plff of which the usufruit was reserved for Defendt — refers to the evidence in the Cause —

Mr. Pelletier for Defendt — contends that the action is without foundation —

No 887
Parke
vs
Handyside
& Dufresne

action on note of Drawer & Indorser —

Mr Perrault for Dufresne, Indorser — The Defr Dufresne did not endorse the note in favor of Plff. but in favor of Rs. Hamilton & Co. This appears by the protest filed — This variance is fatal —

The

The Note was made payable at Bank of Quebec but the demand of payt was not then made of Defr Chandyside, but of another —

No 1352

Gugy — } Action for fees due to the Sheriff
Bruneau } Mr Gugy for Plff. refers to the exhibits filed and the evidence adduced establishing his demand.

Mr Bruneau in person — There is not sufficient proof to support the demand — The Defendt contends that he is not bound for the costs due to the officers of the Court, by his acting as attorney in the Causes wherein those fees are accrued. —

Friday 6th October —

Presnt

Chief Justice Reid
Mr Justice Pyke —
Mr Justice Rolland
Mr Justice Gale —

Warwick } Dumont } Dumont opt } On Plffs mo. to reject the opposition as it contains no sufficient grounds of Opposition, the oppost not alledging that the effects were in his possession —
Mr Drummond contends that he is not bound to answer to this motion as no grounds of insufficiency are stated — That until the moyens are filed the Cause — mo. rejected —

Gugy — } Mo. of Defendt — to discharge the order for closing the Enquete — as no notice was given to Defendt
Stanley }

Mr Gugy for Plff no communication of the affidavit — the Cause was regularly inscribed for Enquete. — refers to the Enquete book —

Languedoc
~
Vautrin

On motion of the Defend^r to discharge the délibéré in this Cause on the grounds stated in affidavits filed with the motion — on pay^t of Costs —

M^r Boston for Pltff opposes the motion, denies all understandings between the parties as to the stopping the suit. —

—

N° 1058.
Clancy —
~
Fisher —

on Defend^r mo. to dismiss the Cause for want of proceeding. —

N° ~~540~~ 540.
Cherrier
~
Duverney

Action for balance of wages —

M^r Chas Mondelet for Pltff claims certain sum for wages, also ℔ centage on monies collected for Defend^r — The principal difficulty is as to the sum collected for which a ℔ centage is claimed but considers there is enough to admit Pltff to his oath on that point. — Pothr. obl. N° 922. 925. — The weight of evidence being here in favor of the pltff. & great irregularity on the part of the Defend^r

2 Delvincourt. 642.

M^r J. Pelletier for the Defend^r — The Pltff has failed in his proof as to the various occupations he alleges to have been employed in for the Defend^r

~~That~~ a balance of £35. 8. 3. owing to Pltff

N° 1263
Mack
~
Flaherty

Action of Damages for breach of Contract. —

M^r Griffin for Pltff. Defd^r bound to deliver all the barley produce of his farm at 4/ ℔ bushel — The

farm

farm would have produced 800 bushels, but Defendt has delivered only 302 bushels, but as the price of barley rose, the Defendt delivered the rest of his barley to Mr Molson at 4/8 P bushel—

There was a question as to the condition & character of Defendt who is stiled a butcher— This has been sufficiently proved

M Rossiter for Defendt— The evidence here is not sufficient— there is no proof of the contract alledged— the only proof of a contract is that stated by Defendt— in his answers to faits & articles.— The evidence is not admissible as between Plff & a farmer for the produce of his farm.

No 2286

Cummings
vs
Baird
&
White mis en Cause

Our rule for folle enchere— on Law

Mr Taylor for Plff. The question here is whether the answers put in by Mis en Cause are sufficient to warrant the conclusions taken by them—

The party must consign under all circumstances and in any Case, must pay his money— & make his opposition pr 5e 76. vo Encheres — The purchaser is presumed to have taken cognizance of the nature and extent of the property exposed to sale—

Mr Sexton for Mis en Cause — has been allowed to answer in writing — The great deficiency in the extent & nature of the property advertised & that sold were such that the adjudicataire cannot be held to pay the money or to take the property — It is not sufficient to make an opposition for the deficiency, as the property in its present extent will not answer the views of Mis en Cause in making the purchase—

№ 2091
Jacobs
Quebec Assur Co

action for loss by fire on a policy of Insurance
Mr Ch. Day for Pltff — premium p. 3 Nov. 1835 —
policy executed on 14th of that month — The
fire took place on Febry 1836 — but Pltff had not
then taken up the policy of Insurance — The fire
took place on 21 Febry '36 — and the loss of property is
proved. —

Mr Griffin for Defendt The first plea — That
at the time of this Insurance Pltff had another assce
in another office, & it was a condition of the present
policy that all such policies should be intimated
to the Insurers — There are other pleas which are not
material here —

The question here becomes material, whether
this is to be considered as a matter of a commercial
nature — which will affect the evidence adduced
here —

As to the question of notice of a previous
assurance, this is a usual clause in all Policies
Ellis on Life & property Insurance — Boudousquie
№ 114 —

The Pltff has alledged the performance of all
the conditions required by the 12th clause in the
Assurance — The aut. deliv? in by Pltff of his loss. Exhi
№ 3 — is not signed by Pltff. nor stated where the fire
took place — & certainly not with the requisites of the policy —
There is no other voucher or aut of the damages but this —
There is no certificate or voucher of any other person
p. 62. 63. Ellis — Boudousquie p. 35. № 2 — p. 142. № 113 —
Scott. v. Assurance Co — Shaw's Reps. p. 354 —

Mr Thom. of counsel for the Defendt — This not
a contract of a mercantile nature & could not be tried
by a Jury — № 4 384 Boudousquie — Ordr 1673 tit 12

Ellis on Life

94

art.

art. 6. & 10. — Even merch^ts could not sue each other for matters regarding their private use — The matter cannot be commercial, but when it is a trade between 2 individuals both of whom must be Merchants. —
1 Jourdan Journal p. 13. N° 16
Code de Com. art. 636. 7. & Denizart p. 427. V° Contrainte par Corps — where action might be in part commercial & not commercial —
Ord^ce 1673. tit. 12. art. 8 — Denizart p. 122. Actes de Notè —
See art. 631. Code de Commerce — as to the Jurisdiction of the Court of Commerce —
Insurances are not commercial except as between Merch^ts — even by the modern law of France — art. 633. Code de Com^ce — except what regards Maritime affairs —
B. p. 433. N° — puts both Insurances on same footing —
art. 632 — Code de Com^ce — shews what is considered as Commercial
1 Vol. p. 123. Vincent. Droit Com^l
1 Pardessus. p. 7. N° 9 —
B. p. 116. N° 88 — ~~Act of Policy of Insurance~~ Act of Insurance is not an act of Commerce —
Quenot p. 314^a 315. 2^no 398 — considers this Contract as not commercial
1 Vincent 349 — Legislation Commerciale — what regards Real Estate, the buying & selling it, as a Speculation or trade, is not commercial. —

Mr Day in reply — The Plff here is stated to be a merch^t the Defend^rs are persons carrying on trade as an association for Insurance — The stock in trade of Plff is the object insured —
Boudousquier — p. 94. N° 70 — considers the Contract as Comm^l — refers to p. 432 — N° 384 —
Pardessus D^t Com^l N° 588. & N° 443 — 1 Vol. N° 46. 48. & 49.
2 Borsari 763 — The dispute between the Juges Consuls & the Maritime Courts — shews that the ~~question~~ authority they assumed was on acc^t of the Commercial character of the matters in question. —

Savary considers these Contracts as Commercial —
Phillips on Insurance — 1st p. 98 —
The proof by Pliff's brother here, is his being his agent
Book-keeper of Pliff. & the goods insured were his stock
in trade — at all events this wd. & the servants would
be temoins necessaires —

At the time of the pay. of the money by Pliff to effect
his assurance, he had no notice of the condition on
pt. the Defts now insist — even if this condition was
necessary for the validity of the Contract, it would be
different — From 5 Nov. to 21 Febs the Policy had
never been sent to the Pliff —

The object of the notice to be given to them was to secure
Defts' agt. payt of the whole loss — as soon as the
Deft. saw the Policy, he returned it & requested that
the indorsement should be made upon it of his
being assured elsewhere —

Considers this condition as merely commissatory, —
unless there has been fraud, it ought not to be
carried into strict effect — p. 29. Domat. 1 Vol. —

The construction of the clause, does not limit at
what time the notice shall be given — because it
given at any future period the Insurers might
withdraw their responsibility —

It is admitted that an account was given in to
the Defts signed and sworn to — and as to the Certificate
of a Magistrate this is to be given in only if required —

See 1 Pardessus. Dr. Com p. 66. No. 46. —
2 do — " — p. 443. 4 —

Saturday 7th October.

Pres.

All the Judges

Rhodes
vs
Scott. —
&
Scott —

On pltff's mo. that ~~Defendt~~ Mr Driscoll do file his power of attys to represent the Deft who has not been called by the process of the Court to appear in Court. —

Mr Driscoll for Defendt says. he is not bound to file his power of attys, as he is sued as carrying on trade with the other Defendt as much in Montreal, altho' this is not stated in the process —

Mr D — to avoid further discussion — filed the power —

Larocque
&
Chapin

mo. to pp enquête during days in Term —

Mr Pinault contends that is of the rule of practice — so held in case of —

No 1879. —
Hart. vs
Ferguson

Over to the 11th inst —

Rhodes
vs
Scott & Scott

On mo. of Lat Scott the elder moves to quash the process —

Mr Meredith for the ~~Defendts moves~~ Pltff objects that the power of attys granted by Defendts is not sufficient to authorise the Advocate to appear for him —

№ 2155
Campbell
vs
Chenière et al

On Defendr motion to quash the process of Saisie-arret made of a steam boat in this Cause —

Mr Geo. Cartier for the Defendr contends that the affidavit on wh this process was granted, is insufficient — as it does not state any of the grounds upon which such process can be granted — This is a droit de gage wh the Pltffs claim, wh according to Poth. Nantissemt № 21 authorised them to retain the possn of the thing as their own — That the Pltffs here had however no droit de gage — the thing here was never delivered by the Defdr to the Pltffs as such — Poth. ed. № — Poth. Bail d'ouvrage — № 394 21
this is compared to a contrat de Vente where the workman furnishes the materials — But if Pltffs had such right of privilege, they could not exercise the right of Saisie-arret but in the terms of the Ordce of 1787. —

In this case the writ of Saisie was not regularly served on the Defendr

Mr Walker for Pltffs. This may be considered as a Saisie simple — arret — or of revendication — the facts here stated are that the Pltffs had a privilege on the boat in question, were ousted of it by the illegal act of the Defendrs — cites case of McNider, Curr and al vs Mitchell & Trustees of Portevins — where privilege of absent Creditors on the goods sold was sustained — This remedy is exercised on rafts of wood — Cites case of Clarke vs Young et al where a similar privilege was exercised on a Vessel in the hands of McKenzie et al — That under the 176th art. of the Custom this kind of arret is recognized — Here the action could not be en revendication, as the Pltff could not have by this means entitled to sell the property pr. 1359. № 2

of

of the Gr. Contumax - the remedy is directed to be followed
pp. 1219. 1329 } C.C. - up by this kind of remedy to obtain payt. of their privilege
1051. N° 23. p. 29. Dumps. Consulat. and of a sale the authority
p. 33. would apply - Merlin Repre vo privilege. §. 11. num
& p. 26 - recognizes this right of attachment to be thereby fo
2 Pardessus. 942. 3. & N° 952 - also p. N° 950. -

7. Geo. 4. Ch. 8 The process was regularly served on the parties -

Mr Cartier in reply - The Plff here must be considered
as proceeding in one of two ways, either in Revendication
or for recovery of a debt - their debt does not apply to the
first case - & in the 2d. the saisie not made conformably
to the Ordre -

The saisie not necessary for the preservation of the
privilege

N° 2562
Hawks
Ashton } on mo. for security for Costs.
Mr Day for Defendt - objects that application
comes too late -

N° 1838
Penfold
Herbichock } Similar case.

N° 2678
Brown
Quebec assce
Co } Action for loss by fire on a Policy of assurance
Mr Day for Plff - The Pleas in this case are the
same as in the Case of Jacobs & same &c -
The only point of difference are, that the policy was in the
possn of Plff under an indorsement of the assurance &c -
In this case seven assurances were held out to the Plff of
payt of the loss -
Mr Griffin for Defts - Defendts hold that this not being
a commercial case, moves to reject the testimony, as inwards -
14 Aut. ord. 1677

that the notice of another assurance made at the Phoenix office was not indorsed on the policy & had been delivered to the Pltff — This applies also to the Insurances at the Quebec assurance Office — The letter signed by the pltff. is no waiver of the Defendt right —

There is no notice taken of the necessity of the notice to be given after fire, & the necessary vouchers in support thereof — a certificate has been produced as having been left at the office of the damage in question, but this certificate appears defective, as not stating to be the goods destroyed by the fire — nor is the amount of the damage declared by that certificate —

Mr Day in reply — the application to reject the testimony is not founded, as the Wits are not the domestiques referred to in the Code Civil — nor has ever been admitted in this Court —

As to the notice required of another assurance this the Court must consider as merely comminatory where there was no bad faith & no injury likely to arise therefrom —

The Statement of loss given in by the Pltff is perfectly sufficient —

As to the Certificate of the Magistrate it is sufficient but this was never demanded, & is an after thought —

No. 135.

De Marconnay
vs
Duvernay

Action for wages —

Bleury for Pltff. The Pltff claims an allowance equal to what was paid to the predecessor of Pltff in the office he filled and for several extra duties he performed — refers to the evidence adduced in the Cause — There is

some

some additional difficulty in conducting a public paper in French more than in English —

Mr Charrier for Defendt — The defence of the Defendt rests upon general principles — here there was no contract between the parties — in such case the quantum of allowance must be fixed by the Court regard had to the circumstances of the case — The rules or allowances made by other establishments cannot serve here unless the circumstances were the same —

Considers the weight of evidence in favor of the Defendt — The Pltff was a stranger — unacquainted with the history and politics of the Country, as well as with the English language — This occasioned many observations as the style & matter of the Memoire, often ill founded — The No of Subscribers not always a sure rule to determine the income of a public paper — the distance & difficulties of recovering what is due occasion many drawbacks — Much of the evidence here depends upon matter of opinion which requires to be examined. —

The designation of a certain portion of the Community as etrangers & anbains, was reproved by the public opinion

Moves to reject the evidence of Mr Gosselin, as being one of the advocates for the pltff who drew the declaration in this Cause —

Bedard
Perrault
Phelan
Trudeau

The Defendt has made a tender of £ payment Pltff at the rate of £125 pan. — considering also with other matters that the paper was published only twice a week —

The oath of the party cannot be admitted as the proof as to the extent work is insufficient. —

4 Sep. 1834 —

Mr Blenny in reply —

B. C. Perrault —

№ 956.
Scott
v
Caseau

action for a certain quantity of wheat

Mr Berthelot for Pltff refers to the agreement to pay a certain quantity of wheat — as to the transport it has not be proved, yet appears admitted by the Plea — files a retraxit for £20 —

Mr Boston for Defendt The contract here is invalid, there is no proof of a separation between Defendt and her husband, and the husband was no party to the deed —

The deed of cession made by the late Jos Dumont to the pltff was never signified to the Defendt Reps p. 276 — re Transport —

Mr Berthelot in reply — The Defendt has contracted in her name as femme separée — & the transport is signified by the action. —

№ 509
Mills dat
v
McNiderval

action on a bill of Exchange by Indorsers

Mr Platt for Pltff states the case — ~~The deposs of John McNida~~

Mr Walker for Defdt action of the Drawers & the Indorsers — Drawers make default — John McNider on whom the bill was drawn cannot be liable by this action —

The action of Dunlop must be discharged from laches of the holders — The Pltff retains the bill in his hands for 20 days during pr Defendt. McNider & became bankrupt —

Mr

Mr Day for Pltff in reply - The Pltff's claim here that Defendts all Riders &c be jointly & severally condemned - there is no discussion here as to the seperate Estate of John McNider -

Gowan v Hart

as to Mr Dunlop - the bill is payable at so many days after date - Chitty p. 158 - 7th edit - only payable at certain number of days after sight where immediate diligence - 2 Pardessus, p. 157 - No 358 - 359 -

1 Savary. Part. p. 149. Parfait Negt. treating on acceptances of bills of Exchange

1 Pardessus Lettres de change. No 136. 137.
Chitty p. 245 -

No 2137.

Try. v Walker as Curr

Action on promy note -

Mr Driscoll for Defdt - note of 19 Dec 1828 filed among other papers by Scott Montgomery -

In April 1832 a settlement was made all settled, but it was admitted that one note was wanting - being a note of Fairlie for £100 - afterwards when these papers were withdrawn from Prothy's Office this note of 19 Dec 1828 - was missing - The Endorsm of Hendon as to the promise to give up the note, does not apply to this note, as mentions no note of the particular date of March 1829 - nor does the Obligation widency bear on the this particular note now demanded -

Mr Day for Pltff - There is no note of Fairlie but one, & this must be the note in question

No 1390

Carter dat v McVicar

Action for goods sold & delivered -

Swaney for Defdt - There is no evidence of demand &

No. 868.

Gregy. v Ermatinger.

On action of account

Gregy for Pltff. The late Mr Perry as deputy of the Pltff had a salary of £250 p an, but besides this he had charge of the monies of Pltff and disposed thereof as he saw fit & without the knowledge of Pltff & much of this money was applied to the private concerns of Mr Perry — Pltff's Exhibit filed at Enquete No 2. C.D — shews monies so applied by Mr Perry out of Pltff's monies — Defts also to exhibits filed at Enquête to shew other monies obtd on checks drawn by Mr Perry —

The authorities on which this action is founded are the Ordre 1667. Tit. 29. Dénisart 15 edit. p 256. vo Compte — Repse vo Compte — Domat 2 p. 127 — Procuration Mandemens

Mr Walker of Counsel for the Pltff, the plea his entitles Pltff to an account — Pth. Mandat No 28 — Verbal power to act may be given. — Pardessus 2 No 561 — where the Commis comes within the description of a person accountable —

Mr Day for Deffdt — The plea of Deffdt that all the monies recd by the Deffdt were entered in the books of the pltff in his possession — The checks noticed appear to have been entered in the Pltff books — The Deffdt managed Pltff's affairs as his clerk, but under his controul, & Pltff interfered whenever he saw fit —

Deffdt here is not accountable — because the late Mr P — was not an agent but the Clerk of Pltff — Had he been an agent Mr P — would have a set of books of his own & not have made any entries in Pltff's books

The

The pltff here has put it out of the power of Defts to render an acct — When pltffs representatives took possession of the books & papers in the Sheriffs office, an Inventory thereof ought to have been made, if Pltff meant to call Defts to account —

Mr Walker for reply — an Inventory was made of all the books & papers of late Mrs — on his decease

Monday 9th }
Tuesday 10th } Enquete days. —

Wednesday 11th October. —

Pres.
Ch. Justice Reid
Mr Justice Pyke. —
Mr Justice Rolland
Mr Justice Gale

Gugy vs. Bruneau } The Court having directed the gentlemen of the bar to speak to the questions raised in this cause —

Mr Cherrier — considers that there can be no question as to the liability here claimed by the Pltff, that acts cannot be admitted — That all the exploits made by the proceedings in the French Courts, the parties alone appear as acting — here the King appears to direct the Sheriff to summon the party in to execute any writs — The Sheriff may demand security where the party concerned is absent — The power of the advocate & procureur ceases by the Insolvency —

Mr Grey — In considering the charge the Procureur and cannot be considered as having any interest in the Causes that come before the Court — This principle would cease if he be made liable for any proceedings had in the Cause —

The action here is for business done & money expended for the procureur of a party, when the party alone is the party interested —

The Procureur could have no action in his own name as the Sheriff in case he failed in the execution of the writs delivered to him. —

Code. Mandat. Art. 143 — power of Procureur determines with the Instance & consequently no recourse can in any case be had against him after this period. —

Mr Lafontaine — The Greffier may be considered as employing the Sheriff as much as the Procureur as he prepares the writs addressed to him — The Stat. of 1836 which regulates the office of Sheriff — by this the Sheriff is entitled to exact in certain cases 20/ — but not from the advocate but from the party — The Sheriff has also a right to demand Security from the party, not from the procureur — The Procureur cannot be considered as the Caution of his client, because the rules of practice forbid his becoming Security for a party in the Cause: — There is no personal undertaking here of the procureur he is acting for his client — The Costs even in the Cause are adjudged to the party & not to the Pr. who can claim them only by a special privilege — The adverse party might as well claim the costs of the Prov. — where his proceedings were found not sufficient or an action dismissed — The Prov. if disavowed may be rendered responsible. —

Mr Fisher — The man who deals with a known agent can claim no responsibility of that Agent — The Sheriff is here in that situation. —

Mr

Mr Boston – The Sheriff has the remedy in his own hands by claiming his fees before he executes the writs addressed to him –

Mr Gurney for Pltff – cites the names of many of the advocates who have paid the fees of the Sheriff – The Proc. has always an interest in every Cause – The procureur is dominus litis, & the client cannot interfere in it – In the offices of Sheriff, credit must be given, and the evident consequence of facilitating the public business requires, that the procr should be considered as the party bound – The 6 Wm. 4. Ch 15, Sec. 23. – allows the Sheriff to claim allowance in cases of seizure of waste – & in case of the seizure of real estate, he is allowed to claim an advance of 20£. – & no more –

Here the Defend. did not warn the Sheriff not to charge him, or to look to his client – When clients live in foreign parts – how can credit be given. –

In case a procr brings a suit for a Minor, for a married woman – for an insensé – & incurs expences – can he send the officer he employs to his client to look for their fees? –

The Attorney has a mortgage on his clients property for his fees & disbursements – but ought not the public officer have a right to claim under this mortgage, when the Procr does not pay –

Pothier Mandat. N° 138. – The ~~advocate~~ attorney may retain the documents entrusted to him until he be paid his fees & disbursements –

Repn vo Procr ad litem. p. 715 – where the Att'y bound to pay the witness – a stronger case than the present. –

№ 1479
Hart
vs
Ferguson

On Plffs. mo. for a new trial —

The Plff. states that one of the Jury, Mr Valois was asleep during a great part of the trial The other grounds of the motion are founded on the misdirection of the Judge to the Jury. — The action founded on an illegal arrest of the Plff, founded on the Ordre of 1785. — The foundation of the right under that Ordre is that the party may be deprived of his remedy as his debtor — That there was proof that the Plff was to be absent from necessity, & had made arrangements for his return. — The party in that action could not say he would lose his remedy, as his action was dismissed. A. J. Rps. 247. — where a new trial was granted, on case where Plff had been acquitted on an informal Indictment — The arrest has been made for more than was due 3. Barn: & Cress. ps. 139. — Refers to a case of one Mr Dougall in L. Canada — where a Merchant who was about to leave the Province for his business. — On the question of damages the Judge said that Plff had his incidental demand as the Defendt — and that none appeared to have been suffered — cites Graham on N. trials.

4. J. R. 247

3. Barn. & Cress. 139

Mr Driscoll for Defendt The affidavit of the Juror is stronger than that of any number of Witnesses to the contrary — That even if less were due than the sum for which the arrest is made no action for mal. arrest lies, and where Defendt says nothing of the smaller sum —

№ 1543
Maccabé
vs
Ross —

On Plffs mo. to set aside the award —

Mr Walker for Defendt. The award was regularly made by an Umpire of Plffs. arbitrator, who was called in without any difference of opinion between the ~~Is~~ arbitrators. The affidavits also shew that injustice has been done as to the amount awarded —

Mr Hubert for Pltff.— The proceedings of the arbitrators were regular, as appears by the affidavits filed.—

№ 2154.

Rhodes
v
McRichard
Scott the elder
&
Scott and T. S

9. Geo. 4. ch. 28.

On motion of Mr Driscoll for Scott the elder, Defdt to quash process from insufficient service— although the party be absent from the Province yet a Curator might have been appointed to represent him instead of having recourse to the mode adopted by the St. 9. Geo. 4. ch. 28— But to obtain this course the Pltff should have shewn that Defdt had secreted his property or concealed himself to avoid service of process— There is no allegation that there was any fraud on the part of Defdt. That appears here by Pltff own act that Defendt is a partner carrying on business with the two Messrs Scotts

Mr Meredith for Pltff, The only question is whether the Pltff is entitled to the notice by Statute to call Defdt into Court.

№ 1162

Fraser
v
Lindsay
&
Fraser ms
in Cause

On motion of Pltff that ~~mis in Cause~~ Defendt be held to render an account as Curator—

Mr Day, as amicus curiæ, state circumstances attends former proceedings had in the Cause.—

309

~~№ 1765~~

~~Kennedy~~

№ 177

Carter
&
Neill

Action to recover value of some powder sold by him

Mr I. Day for Pltff

Mr Pettin refers to the evidence as insufficient.—

№ 875

Perrault
&
Mead

Action for recovery of a harp.—

Mr Day for Defendt— The harp is repaired, & for gt. There is more due to Pltff— gt. Pltff has not tendered—

Thursday 12th October. —

Pres.t
Ch. Justice Reid. —
& the other Judges. —

~~No 387.~~
No 675
On Petition of
Peter H. Edy
&
Miller. Opp.t

On motion of Mr Driscoll for the Interv.d party — moves to be permitted to intervene & set up his claim in the Cause, as having been too late to make his opposition — That the — publication here made at the church door at Nogan called a parish Church, is not sufficient —

Mr Day for Petitioner, objects to the motion, as contrary to law — That cause may be considered on debate on day of return ~~when~~ the petition is filed — The notices here given were made according to law —

4. Geo. 4. ch. 20

No 606. & No 1769
Johnson
vs
Hartley dec.d
&
Moffat dat opp.t

On motion of the Opp.t to set aside the adjudication made in this Cause from the irregularities in the proceedings —

Mr Taylor, the property of Def.d here has been sold & sacrificed by the irregularity — The property was adjudged to a person who said that he purchased

order for proof — —

No 2451
O Sullivan
vs
O Sullivan opp.t
&
Bisset opp.t

Mr Thom for opp.t Bisset, opposes the claim of Mr O Sullivan — In June 1825 by virtue of a power of Att.y from Mr O Sullivan rec.d from the Crown Gent the sum claimed — Subsequent to this the claim.t rec.d a part, and the claim for the balance is

now

now claimed — The claimt demands his claim for interest agt Wr Grants Estate as being his Mandatary 6 Merlin p. 401. sec. V° Interets — all the instances in which interest would run as of right — The case of the Administrator of an hospital is however exempted Chitty on bills 663. 8th edt — no interest for money had & rec. although prudently —

Mr O'Sullivan for Mr Mondelet for Mr O Sullivan, the claim here is on a contract to gt. both parties have been parties — altho' Wr Grant made no special acceptance of the Pr of allg — but some time after, rec. the money for appt — Domat p. 17. ch. 2 1 Despeisses part 1 titre 1 p. 171 — sec 3 N. 4 — Lacombe V° Procureur — liable for what he receives & applies to his own use Domat liv. 3. tit. 4. s. 8. p. 265. 6. 195. 204 —

Desp. 171. Mr Thom in reply — the retention of money does not imply the employment of it. see distinction made by Despeisses. p. 171. 18 Duranton. p. 230. No. 246 — fraud not presumed — the act of prosecution & date of it must be proved, 6 Luther p. 281 — & Pennotte. p. 600. Merlin Sec. 4. art. 13 this is new law & not part of Customary France — It is new principles of Roman law, & the authors cited shew it —

Pan. de Bothier. 1 p. 573. art 38. 39.

—

N°1105 Smith vs Muhlberger et al pan. ppl. d'abd

Action of account & of partition —

Mr Mondelet for Plff — states the connexion & relationship of the parties — & the part & share of each in the succession of the late John Muhlberger On account has been rendered, upon which the questions here arise — Debats de compte have been made — Domat 265. 6 claims 3/4 in lieu for the Crn & the interest upon it — Id. p. 195

Brillon. Vs Inherits. p. 534 cites arrt 15 Nov. 1615—
See the other objects of Contest, in the Debats & Compte—
Mr O Sullivan for Defendt— not easy to settle this
Succession— 3 marriages — no Inventories — nor Marr.
Contracts — Has not had time to ex. the account; but
concludes to an reference to Practicians —
The crew not to be allowed, because the property was
made at its full value —
as to Interest — contends not due. cites D'Argis on interest
ch. 12. N. 8 —

Mr. Mondelet in reply

No 309.
Kennedy
& Gale —

Action for recovery of money due on a
contract for Carpenter, Joiners & other work

Mr. Meredith for Pltff states the Contract — after
the making of which additional work was
agreed upon for £88 — The only question here is
as to the time of finishing the work

Mr Fisher for Defendt — There is a question as
to the reception of Verbal testimony — The Pltff
is a master Carpenter, who has furnished all the
materials in doing the work in question —
The ordr of 1785, shews that admission of this testimony —
There is besides a commencement de preuve par
ecrit in this Cause — from a letter filed in the Cause —
N. Dorval Vs Davis & Marché — p. 363 —
on 24 Feby contract entered into — & on 25. March Pltff
agreed to perform the additional work within the time
of the first contract — The Carpenters work was not
finished until the 28 August — see dep: of Austin —

Pothier

Pothier № 422. Louage — as to the damages to be allowed by the default of the workman —

There is a conflict of testimony in the Cause but considers that of the Defendt is the most reputable —

Mr Meredith for reply — The material question here is whether the work 2d undertaken could be finished in the time stipulated for finishing the work of the first contract — has proved by strong evidence that the work could not be done within the time — The Pltff never undertook to do the extra work within the time —

The only deduction Pltff admits is for a room not painted — Pothier Louage. № 408 — augmentations in the Contract cannot be proved by verbal testimony —

№ 43
Tenlon
vs
Prince

} action of debt on Obligation —

Mr Driscoll for Defendt — Plea that Defendt owed the debt to the pltff on other & not to pltff — The facts & articles proposed to Pltff have not been answered —

Drummond for Pltff the plea does not raise the question stated in his argument —

№ 987
Archambault
Devos & Jobidon
vs
Bleury
appt

} On the reward of Expert —
Mr Bleury, question as to damages sustained by the destruction of a building on the land purchased by the Appt — demands the homologation of the report of Mr Robitaille & Morin

Mr

№ 2114
Carmichael
vs
Gray
& Contra

action on Promy Note
Mr Drummond for Defendt — admits the note, and sets up an Incidental demand for several notes & monies paid —
Mr. Bleakley for Pltff. the Incidental demd cannot be maintained — only one wit. ex. objected to as inadmissible — The exhibits filed are not contracts between the parties, but made between third persons — the money Counts will not apply — Chitty on Bills. p. 364 — 6th edit — as to the Count for goods sold & delivered, it appears by the testimony of the Work that this is compensated by another acct. in a pass book —
Mr Drummond for Pltff cites Chitty. p. 593 —

№ 916
Fabrique de
St Constant
vs
Lanctot

Possessory action — in Rem[illegible] &
Mr Pelletier for Pltff. states that Defendt has run a road through a meadow in the possession of the Fabrique — The Defendt pleads that he acted as Inspector of roads & acted under the authority of a P. Verbal of the Grand Voyer — The Pltff replies that Defendt departed from the directions of the P. Verbal —
Mr. Cherrier for Defdt — question here who shall pay the costs — The Defendt is sued personally — he is not in possession — but the public of the ground in question The Report of the Surveyor does not establish

the

the right of the Tabagne — it is merely matter of opinion — and the road he has traced is merely imaginary

№ 1527
Mathieson
Lebel

On 3 objs
Mr Lafontaine — 2 objs. pl. The third only due

№ 1584 — only 6 years due —

Friday 13th October.

Prest
Ch. Justice Reid

№ 1162
Cardinal
&
Labadie.

actio ex locato. — by propr. of the Tenant —
Mr Greene for Pltff. the Pltff had rented a house to Defendr for 3 years & regrets he now grants it as the lease is expired. — The Defendr sets up an exception founded on a clause in the lease that he was to have the preference to continue the lease of the Pltff found no higher rent — The Pltff contends, that she is not bound by this clause, as the Defendr never intimated to Pltff his intention to retain the house — That on 1 May last the bail ceased entirely. 6 Jurist. p. 8 — on 1st May there had been no acceptation of the promise on the part of the Defendr — Pothier. Vente № 481 — 6 Jurist p. 26 — That this acceptation ought to have been signified 3 months before the expiration of the lease. — The Pltff has on the contrary notified the Defendr 3 months before the expiration of the lease that she wanted the house for her own use. 6 Jurist p. 26

6 Tulane p. 34

The Pltff as lessee was not bound by this clause in the lease—

The Pltff also claims damages from Defendt for giving an unfavorable account to individuals of the house & thereby to prevent Pltff from getting other tenants.—

Mr Peltier for Defendt The authorities cited by the Pltff do not apply to the case— The stipulation in the lease was a right acquired to the Defendt If the lessee had any notice to give to the pltff, it was that he did not intend to keep the house— That the Defendt by remaining in the house after the 1st May, was a renewal of the lease— Poth. Louage. 132. 266. in fine— Laconbe. Vo Vente. sec 7. No 1— Dr. Vo Convention. sec 1. No 6 Id. Vo Retardement— Dec. Droit— Promesse de Vendre ou de louer

No 2300

Watts dats
v
Alliance Assurce Co

action on policy of assurance of fire

Mr Thom for Pltff. states policy on ft— the action is brought— refers to the admissions filed & the evidence given as to the facts in the Cause— a Policy of Fire Insurance comes not within the view of a Commercial transaction— p 116. No 88— Boudousquie— Vincent. the mere object of making a profit, does not make it Commercial— a mere sale of goods is not commercial if not made to sell again— art 632. Code Commce as to the Bureau d'affaires kept by these offices— cannot make it Com.l— As to the exception pleaded— Ellis on Insurce p. 12— The construction of the premises & the nature of the goods to be insured were correctly described— Weskett on Insce as to nature of Deffts. kinds of property assured— p. 539— The Pltff has passed over the first sentence in the Policy & seems to adhere to the 2d Sentence. of— is immaterial, while the first sentence appears to be admitted— There no proof in support

support of the allegation of the increased risk on a Tavern than in a Grocery Shop by Tinsmiths Shop. The contrary is the truth as there is no kind shewn him of a distinct & greater premium in case of Tavernkeeper than for keeping a Tinsmiths Shop.— This is done at home. Ellis p. 11— a Tavern in France is ranked in the same scale of premium as Smiths. Bordeaux p. 528.— The premiums by the Quebec assurance Co are ranked in the same scale with regard to hotels &

528

But the Pltffs here did not keep a tavern, they merely took out a licence to keep a tavern — not to afford accommodation to travellers, as is generally the case of Tavernkeepers, & this is generally the Custom in & about this town — see Distinction between an Inn a Tavern & a Coffee house. 4 Camp: p. 73. 77.—

The usage of trade in regard of the kinds of taverns kept is of consequence in the application of the interpretation of the kind of risk as to particular trades 2 Doug. 572 Park on Insurc p. 522.— and 3 Camps. 15. as to extent of this Usage — also. 1 Camps. 563 — & cases in notes —

Park 522

Elles. Ch. 3 art 11. p. 59 — the description here may be considered here as immaterial. — and the Defendts would not have been entitled to a greater rate of Insurance — Bordeaux p. 80 — art 54 — The greater risk absorbs the lesser, but equal risks balance each other —

Mr Buchanan for Defdt — The act of Insurance is most certainly commercial — if not so — this action must fail — because the Insured is no party to the Contract. — The laws of evidence on Marine assurance are admitted same as in Maritime Insurc — The 631 art. Cod. Com. shews the nature of this — 10. Dalloz p. 414. — 4 Locre. p. 115 — 1 Vincent. 348. — Pardessus. assurc terrestre p. 289. 311. 315 — D'alloz. Dic. Com. Vo Acte de Commerce No 1. & Id. Vo Competence Comml No 127.

631

6 T. R. 714

The character of this contract is taken from the English Law. 6 T. Rep. 714 — 2 H. Bl. Rep. 581 —
Defendt is entitled to take advantage of any equivalent infraction of the conditions with those expressed in the Policy — There are several clauses contained in the Conditions which require a notification to be given to the Insurer. 1. Sanders on pleadt 595 — Hughes on Insurc 351-473 —

All conditions on the back of Policy are conditions precedent, the failure of any one of which is sufficient to vacate the policy. —

1 H. Bl. Rep. 577 — case in note —

Quenen's Treatise — p. 140. principles same as in Engl and as to communicating to the Insurer all circumstances within the ken of the Insured. — Id. p. 280. — when party ensures at another office without communicating it —
Id. p. 283. 4 — good faith in the insured must necessarily as to all essential facts — The keeping of a tavern &c — was a reticence — Id. p. 285. —

Sanders. 604 — concealment of any material fact avoids
p. 350. Hughes — all circumstances must be made known
of — although not material, yet ~~they~~ had they been known
to the assurers they would not perhaps have accepted
the Insurance — Id. 506 — as to distinction between a
Coffee house and an Inn — and a Tavern with a bail-alley
where people of all descriptions at all times resort, is a
greater risk than comes within the Insurance — Id. 510 —
Proposals or Conditions endorsed on the Policy must all be
complied otherwise the policy is presumed not to have been
entered into —

2 Pardessus Dr Com. p. 475. bottom of page —

Ellis. p. 11 & 12. In this Country the scale of premium on the policy is not used — but the keeping of a tavern is considered as an extra risk — refers to ex. of Fait —

It is contrary to the practice of the offices here to allow the greater risk to absorb the smaller, but on the contrary all risks are calculated & considered —

Refers to testimony of Menzies, a lodger in the house — says, that the greater part of the liquors was furnished for the ball-alley —

Knapp — says he never knew losses paid by Assurers when house being a tavern is not so described — states the greater risk of a tavern —

All the witnesses say that the insurance of a ball-alley does not ~~necessarily~~ imply the insurance of a tavern, which comprehends a greater risk. —

Doubts whether there be any sufficient proof of the loss, the witnesses not positive — no Inventory of goods — no books of acct — no person who had an intimate knowledge of the loss

The ordinary way to establish the loss is by factors &c but there is nothing to prove that Pfft had an interest in the goods — Quenault. p. 164 — Sanders 597. on pleads. & p. 602. — 604 — Ellis. p. 21. —

Hughes — same principle — p. 12. Quenault. 183 as to proof

Mr Thom. in reply — considers the property of Pfft is proved. In regard of reticence — this is not misrepresentation — it is only concealment, and it must be material — & Marsh. p. 330 — This declared to be new law — & the only question is as to the materiality of the fact concealed — If the Tan-bark risk was as great as that of the Tavern keeper, then was no additional risk —

Considers the English authorities as not applicable here — and this Court has considered the Contract here as not Commercial

4 Douglass. 32 — as to usage — to shew that had the Tavern been mentioned the Insurers could have received no greater premium

Nov 7
M'Intosh
vs
Doull

On law —

Mr. J. Day, the matter here pleaded should have been pleaded as matter of form, as it regards not the merits of the action. Besides it is not said that Defend^t is domiciled in U. Canada

№ 69.—
McColl
vs
McDonald
&
McDonald
opp^t

This cause being called for hearing the oppt by Mr Greece moved to discharge the rule for hearing & a day given for proof of payts made by him to Mr Boston the atty of the Pltff— Mr Boston for Pltff states— his proceedings as irregular

№ 1542
Ferguson
vs
Weir —

action for rent— &c

Mr Driscoll for Pltff - action to recover the amount of certain articles sold to Defendt and for rent & advertisemts in the Montreal Herald— There is no proof of the sale of the articles, but they were left in the establishment sold to Defendt— and came to his use, and they were so considered by the Defendt— Objects to the charge made by Defendt of £10— for his expenses in going to U. Canada to which Pltff is not liable—

Mr Hart for Defendt— demand of £21. 10 for rent is admitted— objects to the demand for advertisemt &c— is charged to have been made subsequent to the Sale of the Establishment to Defdt— No type was sold by Pltff to Defendt— The set off of Defendt— is for £10. ~~&c~~ which Pltff received for Defendt—

Saturday 14th October.

Pres.t

All the Judges

No 232

Drolet
Wells
Wells opp.s

On merits of opposition—

Mr Lafontaine for Plff— hearing on 2d opposn being a claim ~~of the both Wife of~~ the Defendt— who claims the realty as belonging to the minor children of Defendt— but the oppost has no qualité to make this opposition — ~~both~~ allowing even that these minors were the proprietors — at all events the other half of the property be sold

Mr Buchanan for Oppt— it is too late to oppose the qualité of the oppost— The Defendt held merely as a Trustee, and the claim must be supported on behalf of the minors, in the mean time the Defendt holds the property on behalf of his children.—

No 396

Pelton
vs
Juliette

Action for house rent—

Mr Griffin for Plff— Defendt states that he owes no rent as he has not enjoyed the property according to his lease as part has been destroyed by fire — makes a tender— The witnesses say this tender was in deniers decevents — whereas that could not be the case, as the Banks had then stopped payt in specie — The buildings were rebuilt—

Mr Bourneau for Defendt— The buildings were rebuilt only in January after the fire of happened about middle of Oct— This occasioned a great damage to the Defendt— has tendered £30—

№ 1842.
Guay vs Doré —

On law —
Mr M'donell for Defendt The declaration states no demand of the Defendt for the debt in question —

№ 166
Tessier vs Tetro —

Action for tithes - on law —
Mr Lafontaine for the Plff on 19 Nov. 1830 the parish of St Mathias was canonically erected and in 1828 the parish of St Athanase was erected, In 1835 letters patent were issued declaring the parish of St Mathias civilly erected — This parish was regularly erected — In 1832, the Bishop of Quebec decreed that a part of the parish of St Mathias should be dismembered by St Athanase — This order of the Bishop was not accompanied with any formality and a part of the Inhabitants proprietors of St Athanase were opposed to this order of the Bishop

4 Wm 4. ch. 51 —
Order of 1679 — form of erecting a parish. —

The order of 1679 prescribed the mode of erecting a parish and the manner of detaching any part of it — by Stat. 1 Wm 4. ch. 51 another mode of erecting a parish is appointed and the parish of St Mathias having been erected under this Stat. is legal while the change proposed by the Bishop is informal and without effect — and therefore the acts of marriage & baptism of those persons thus detached must be done at the parish of St Mathias —
The latter decree of the Bishop of 1836 has been regularly followed up, but it does not comprehend the years of 54, now in question —

Mr Cartier for Defendt Does not contest that the years

rang of 54. is within the parish of St. Mathias, but that in regard of spiritual matters it belongs to St. Athanase Vo Succursale Durand — The Bishop has a right to assign the part of Dimes to the Curé doing the Duty — Louage. p. 397 — When Pluff was appointed it was decided by the Bishop that he should not have the Dimes of this part of his parish — 2. Marcheal p. 112. 113 — 4p. 144 — Durand. Vo Dimes. to shew there may be several Decimateurs in the same parish —

Laforetaine — The Bishop cannot name a Vicaire without the consent of the Curé — when he is accepted the Bishop may limit the portion congrue to be paid to him — But the Bishop cannot stipulate with a Curé to give him a parish on such & such conditions — We have no — Decimateurs in this Country —

266.7. Journ Mr Carter — unless the Bishop authorises the Curé to perform the spiritual duties, he cannot do it — another may be appointed to this Louage. p. 300 — the Curé entitled to all the tithes, if there be no other estimateurs —

Monday 16th October

Prest.

The ch. Justices & the other Judges

Rhodes
vs
Scott
&
Scott & al TS.

On motion of Pliff for a rule on the T.S. to shew Cause why they did not assess the dmgs made by them

Mr Driscoll objects to want of Ps of attys to bring that suit & alg that dmgs is sufficient —

No 1114
Lee
vs
Whitehead

Action for value of park —

Mr Fisher for Defendt. on Page of Lafrance owed Defendt a debt sent them the park in question as a remittance to be put to his credit — soon after Page died — on this Lee his Creditor came forward and claimed this park as his property — The evidence shews that a part of this park was sold by Lee to Page, but uncertain how much & therefore the Pliffs right becomes uncertain — but the proof in is altogether insufficient — there are only certain letters or marks on the barrels, but this is no proof of the property of Pliff when forced in the hands of the late Page — Page was not a Commission merchant — but a shop keeping trader — at least not known as a Com. merchant — Paley 250 — Agent dealing as a principal binds the principal — 251 — when the party deals w. agent not knowing him to be such — also p. 253 —

Tuthen

4 Pardessus. p. 562. No 1278 -

M Rossiter in reply - The evidence shews a different transaction wholly different from that stated by Defdt Page 20. this pork to be sold on commission, and in this instance acted only as the agent of the Pltff, & handed over the pork to the Defendt to sell for him -

No 373
Kennedy
vs
Annesley & wife

Action for wages -

Mr McCord for Pltff. The Pltff claims for services of the Sister in law of the late Peter Miles, whose Estate and property is now held by the Defendt - The pleadings shut the Servt of Pltff were gratuitous - the fact is not so - her services were valuable & proved

Mr Rossiter for Defendt - has pleaded prescription to the demand - There were besides a variety of clothing & other articles furnished to Pltff by the late Miles. of wh she gives no account -

The Pltff was a minor and the action could not be brought sooner - but here a discretion must lie with the Court as to the action

No 139.
Cameron
vs
Dods -

action for damages by the dog of the Defdt

Hart for Pltff - The character of the dog is vicious

Preskel for Defendt - The Pltff went into a barn where no person had a right to go and where the dog was shut up -

No 1622.
Johnson
vs
Reid
M Johnson & al
& Condon

action for rent in work - & report of Arbitrators

Mr McCord for Defendt moves to set aside the report - as arbitrators have exceeded their authority

Mr Grey for Defendr The arbitrators were authorised to take cognizance of all the matters in dispute between the parties, and this third piano was a part of those matters —

No 169.
Seaver
v
Weir

Action for price of 2 lots of land sold to Defendr by tirage au sort —

Mr Drummond for Pltff — refers to former argument — it was for the Defendr to shew that the penal Stat. he refers to were in force. See p. 111. —
Mr Hart for Defr — Defr not bound by the act of another person done for him without his authority. — refers to Mr Blackwood's drawing for him in his absence. —

No 825.
Felch
v
Knight
& Contra

Parties to submit statement of their respective pretentions to the Court in vacation. —

No 1037.
Hartley
v
McLaughlan

Action on a lease of a farm —
Taylor for Pltff — plea alleges want of fences & the making of roads across the farm, & disputes Sobs writ —

Mr Scott for Defendr has pleaded pay to further balr of £43 — by various articles — one road only reserved — two were opened by Pltff — That the fences were not made up by Pltff as agreed by the lease —

№ 944.

Holmes
vs
Rail Road Co

action for damages done to pltffs property by Defdts

Mr Boston for ~~Defdt~~ Pltff — plea — general issue — and unforseen accident —

Domat. lw. 2 tit. 8. sec 4. art. 1. № 4. 5. 6 — p. 184. des Dommages — 11 Toullier. p. 202. 3. 217. & 218 —
Merlin. Rep. vo Incendie —
Repre ~~Guyot~~ vo Incendie —

Mr Day for the Defendts — The plea sets out that the Defendts purchased the land where the Rail road passes & fixed the price —

The case here is merely fortuitous — & not obligatory on Defts. Dic. des arrets. vo Incendie — 729. —

2. Nos 4. ch. 58. 1 Poth. Pand. lw. 9. p. 283. — ad lyc em Aquilium —
Repre vo Cas fortuit — Lacombe. vo Incendie —
1. Domat. p. 25 —
Slorey vs Bailsmants. p. 18. 19 & 20 —

Mr Boston in reply — contends that the mode by wch the accident happened must be imputed to the fault & negligence of the party ~~from~~ whose act it happens — 11 Toullier. p. 217. 218 — The proofs thrown on the party causing the accident to shew that there was no fault on his part & that it was accidental —

Kenny
vs
Laframboise

action for services as book-keeper & accountant —

Mr Dawnmond claims wages at the rate of £125 — & claims balce £64. 3. 7 — The Defendt has admitted a sum of Pltff up to 1 May 1834 — he claims to 1 Nov —

Mr

Mr Mondelet for Defendr action for a quantum meruit — has allowed Pltff £75 for an — pt was suffr — in consideration of the services rendered. — has allowed wages up to 1 May, as after that time Defendr had no business to carry on —

Tuesday 17th October.

Prest

The Chief Justice & other Judges

Strang dal
vs
Palsgrave

on Defendrs mo. to quash the writ of Ca. from irregularity —

Mr Day for the Defendr — The decln states the drawing 2 bills of Exch. & protest for non-acceptance but no protest for non-payment — that Defendrs have become bankrupts — That the affidavit merely for the non-acceptance of the bill does not express a sufficient cause of action — 2dly That there is a variance between the affidavit and the declaration as the essence of the demand is alledged in the bankruptcy of Defendr whereas the affidavit rests upon a present debt accrued —

1 Tidd. 294 — 188 — Dickenson 295. & 29.

Walker in answer — there is no variance — the action is founded in law, and the affidavit is conformable thereto —

Pardessus, No 162. Change. —

The Queen
vs
Lalanne ted

on mo. by the Curatrices that they be permitted to proceed ex parte — rejected —

No 718.
Rasco
v
Dubord
&
Bibaud Gar

The Pltff asks for Judgt
The Defendt moves for Judgt as per his garant

No 895
Gregy
v
Henshaw

action for fees as Sheriff
Quetion depends on another cause now pending

No 657
Hart
v
McNiecal

The Defendt in this case alleges that the cause ought not to be heard, as the delay has not been amended nor the Costs paid.—

Pltff demands Judgt—

No 423
Troup
v
Ritchie

action for work & labor
Mr Rossiter for Pltff

No 2314
Wilkinson
v
Ross.—

action on the deed of Sale executed in England
Mr Walker for Pltff. The action is founded on the right vested under the above deed and a transfer to Pltff of the right of another—
Mr [illegible] for Defendt— Pltff is the son of one of the suppens entitled to the money under a deed executed in England, which deed is null not having been executed in proper form.— refers to Story Conf. of Laws— p. 199—207. 215 1485. Pardessus Dr. Com & Vol. — 1. Cochin. p. 72—697— 2 Dagueaussau 637.— 10 Toullier. p. 117. in note — Story 218. 219 & 249.— 3 Camps. Reps. 166. Clan. v Levy—

The deed is invalid every where when not so executed — Story. p. 203 — 2 Strange 732. T. T. Rep. 243 3 as to the Law of England — 1 Chitty on Stat. p. 938. 1673. 5th Geo. Stat. 23 Geo. ch. 58. sec. 12. Stat 37 Geo 3 ch. 3. sec. 19. —

Walker for Plff — This is an instrument that does not require to be stamped — as it regarded property in the Colonies — Com. Dig. Vo Stamps — Story. p. 216. — 264 — 524 —

No 1186
Vallée. —
vs
Turcotte

action hypothq. —
Mr Lafontaine for Plff — action founded on Will of the late Mr Gauthier —
It is contended here that Plff has no right to the Capital but only to the interest — but by the Cession made by Lo. Jos. Gauthier it will appear he is entitled to both — The Deft has made offers — but they are insufficient —

Mr. Mondelet for Deft — The Plff as Cessionaire of Lo. Jos. Gauthier, has no right to the principal, but by the will of Jos. Gauthier he was restricted to the interest only — That a sum of money may be a subject of Substitution as well as a real property — Pothi. Substn — This is however a part of the Inheritance of Jos. Gauthier of he gives to his Son en Usufruit —

Mr Lafontaine — Lo. Jos. Gauthier is not excluded from the Succn by the will — & In such case of exclusion if it was a real property of had been given the objection might apply — The grevé de substitution could receive the money, & might be bound to accept it. if the Debtor called on him to accept it — But this is a question

merely







JUILLET



Le ☉ entre au ♌ le 22, à 10h. 41m
☽ le 2, à 4h. 36m. Soir. ☽ le 10,
☉ le 17, à 5h. 57m. Soir. ☽ le 24,

MOIS.	JOURS.	Cl.	FETES.	Lev. H.M.	C H.
1	Samedi	b	Oct. de s. Jean Bapt. *lt.* 3 *nt. ex die*	2 4	17 7
2	DIM.	b	7 *ap. Pent.* Visit. ste. Vir.2M[*inf.o.*M	4	18 7
3	Lundi	r†	de l'oct. des ap. *inc.* 2*or. Miss. concede*	4	18 7
4	Mardi	r†	*de l'oct. or Miss. ut* 3 [3 *eccl. vel pro P.*	4	19 7
5	Mercre	r†	*de l'oct. or.Miss. ut* 3	4	19 7
6	Jeudi	r	Oct. des Ap. *Miss. propr.*	4	19 7
7	Vendre	vr†	2 *or. Miss. Fidel.* 3 *Acunctis.*	4	20 7
8	Samedi	b†	ste. Elizabeth, v. 2*or. M. Acut.* 3 *ad lib.*	4	21 7
9	DIM.	b	8 *ap Pent.* DEDICACE, oct.	M 4	22 7
10	Lundi	r†	VII Frères m. 2 *or. M. oct.*3*concede.*M	4	23 7
11	Mardi	b†	de l'oct. 2 *or. Miss. s. Pie.* 3 *concede*	M 4	24 7
12	Mercre	b	s. Jean Gualbert, Abbé- 2	M 4	25 7
13	Jeudi	r†	s. Anaclet, mart. *or Miss . ut* 10	M 4	25 7
14	Vendre	b	s. Bonaventure, év. et doct.	M 4	26 7
15	Samedi	b†	s. Henri, emp. conf. *or Mis sut* 10	M 4	27 7
16	DIM.	b	9 *ap Pent.* Oct. de la Dédicace.	M 4	28 7
17	Lundi	b†	s. Alexis, conf. *inc. or.Miss. ut* 8	4	29 7
18	Mardi	b	s. Camille de Lellis, conf.	M 4	30 7
19	Mercre	b	s. Viucent de Paul, conf.	4	31 7
20	Jeudi	b	s. Jérôme Emilien, conf.	M 4	32 7
21	Vendre	b	N. D. du Mont-Carmel, (du 16)	M 4	33 7
22	Samedi	b	ste.Magdeleine. [*s. Lib.* (*sol* s. Jac.)2M	4	34 7
23	DIM.	r	10*P.* s.Appollinaire, év. m. 2*or. Dom.*3	4	35 7
24	Lundi	vl†	Vigil. 2*or M. Fidel.* 3 *ste. Christiene*	M 4	36 7
25	Mardi	r	ST. JACQUES, ap patron de la Cathed.	4	37 7
26	Mercre	b	ste. Anne, M [dupl. 1*cl.*. oct.	4	38 7
27	Jeudi	r†	de l'oct. 2*or.M.de s. Pant.* 3 *conce.*M	4	39 7
28	Vendre	r†	ss. Nazaire, &c. m. 2*or M. oct* 3*con.*M	4	40 7
29	Samedi	b†	ste. Marthe, v 2*or M.de oct.*3 *ss. Mt.*2M	4	41 7
30	DIM.	b	11 *Pt. et* 1 *Aug.* 2 *or M.* oct.3 ss. Abd	4	42 7
31	Lundi	b	s. Ignace. conf. M [(*sol* ste. Anne)2M	4	43 7

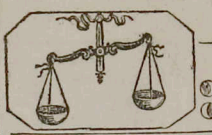
AOUT.



Le ☉ entre à la ♍ le 23 à 5h.
☽ le 1, à 7h. 26m. Matin. ☽ le 9,
☉ le 15, à 0h. 45m Matin. ☽ le 22
☽ le 30

MOIS.	JOURS.	Cl.	FETES.	Lev. H M.	C H.
1	Mardi	r	Oct. de s. Jacques. *dupl. Min.*	M 4 44	7
2	Mercre	b	s. Pierre aux Liens.	2M 4 45	7
3	Jeudi	r†	Invent. s.Etienne, 2*or M. acunc.*3 *ad lib*	4 46	7
4	Vendre	b	s. Dominique, conf.	4 47	7
5	Samed	b	N. D. des Neiges.	4 49	7
6	DIM.	b	12 *Pent. et* 2 *Aug.* Transf. de N. S.	2M 4 50	7
7	Lundi	b	s. Cajétan, conf. *ine.*	M 4 51	7
8	Mardi	r†	ss. Cyriac, &c. mart. *or. Miss. ut* 3	4 52	7
9	Mercre	vl†	Vigil, 2 *or. Miss. Fidel.* 3 *s. Rom.*	M 4 54	7
10	Jeudi	r	s. Laurent, mart.	4 55	7
11	Vendre	r†	de l'oct. 2*or. Miss. ss. Thib. &.*3 *conce.*M	4 57	7
12	Samedi	b	*Jeûne*, ste. Claire vierge.	M 4 58	7
13	DIM.	r	13 3 *Aug.*2*or M.de oct* 3 *ss Hyp*(*s. Lt*2M	4 59	7
14	Lundi	vl†	*de* Oct. *Ms.de Vig.*2*or de oct.*3 *s.Eus.*2M	5 0	7
15	Mardi	b	Assompt. ste. Vrg. *oct.Nihil. s.Laurent*	5 1	7
16	Mercre	b	s. Hyacinthe, conf.2*or Miss. de oct. Ass.*	5 2	7
17	Jeudi	r	Oct. s.Laurent. M [3 *de oct. s.Lt* 2M	5 3	7
18	Vendre	b†	de l'oct. de l'Ass. 2*or M. sAga.*3 *de sp* M	5 4	7
19	Samedi	b†	*jeûne* de l'oct. 2*or M.de spir.S* 3*ec.v.p.p*	5 5	7
20	DIM.	b	14 *et* 4 *Ag.* sJoachim,*Ms. vesp.sol* de Ass	5 6	7
21	Lundi	b	ste. Jeanne de Chant. v.*inc*[s.Barthl.2M	5 8	6
22	Mardi	b	Oct. de l'Assomption.	5 9	6
23	Mercre	b	s. Philippe de Béniti, conf. 9 *lect. et com.*	5 10	6
24	Jeudi	r	s. Barthélemi, ap. [*Vigil-* M	5 11	6
25	Vendre	b	s. Louis, roi, *lt.* 1 *nt. beatus vir.n.dic cr.*	5 12	6
26	Samedi	b	s. Bernard abb. et dr. (du20.)credo	M 5 13	6
27	DIM.	b	15 *et* 5 *Aug.* s. Joseph Calasantz, cf.	M 5 14	6
28	Lundi	b	s. Augustin, év. et dr.	M 5 15	6
29	Mardi	r	Décollation de s. Jean Bte. *dupl. map.*	5 16	6
30	Mercre	b	ste. Rose de Lima, vierge.	M 5 18	6
31	Jeudi	b	s. Raymond, Nonnat. conf.	5 20	6

SEPTEM



Le ☉ entre à la ♎ le 23
☽ le 7, à 6h. 19m. Soir. ☉
☾ le 21, à 11h 0m: Matin. ☽

MOIS.	JOURS.	Cl.	FETES.
1	Vendre	b†	s. Giles, abb. 2*or Ms.Fidel.* 3 *ss.Mart.*M
2	Samedi	b†	s. Etienne,Roi, cf. 2*or Ms.Acunc.*3 *ad lib*
3	DIM.	vr	16 *et* 1 *Sept. or Miss. ut* 2
4	Lundi	vr†	2 *or. Miss Fidel.* 3 *Acunctis.*
5	Mardi	b†	s.Laurent Justinien, év. et cf. *or Ms.ut* 2
6	Mercre	vr†	*or. Miss. ut* 2
7	Jeudi	vr†	NATIVITE STE. VIERCE, *oct.* M
8	Vendre	b	de l'oct. 2*or Ms.de s. Gorgon.*3 *de sp. S.M*
9	Samedi	b†	17*et*2*Sept.*S.N.M.dupl.1cl.oc(*sl*Nat.)M
10	DIM.	b	s. Nicolas Tolent. conf. (d'hier). com. oct.
11	Lundi	b	[S. N. M. et ss. Proti
12	Mardi	b†	De l'Oct. S. N. lt. 1 n. ce scrip. occ. 2et3 n. ut [in die fest. 9 lect. ut in sab. Sept.
13	Mercre	b†	De l'Oct. offic. ut heri.
14	Jeudi	r	Exaltationde la Ste. Croix, M
15	Vendre	b	Oct. de a Nat. sine com.oct. s, Nom, M
16	Samedi	r†	*Jeune* ss. Corneil, etc. m. 2 *or. miss. oc. s.* [*Nom.* 3 *ss Euphem. etc.*
17	DIM.	b	18 *pt. et* 3 *sept.* oct. du s. N. de M: *omnia*
18	Lundi	b	[*ut in die fest.* (sol st. Mathieu). M
19	Mardi	r	s. Joseph de Cupertin, conf.
20	Mercre	r	ss. Janvier, &c. mart. *inc.*
21	Jeudi	r	*Jeune* 4 *Temps* ss. Eustache, etc. m. 2 *or.* [*miss. fer.* 3 *vig. de quanil fit in off.* M
22	Vendre	b	s. Mathieu, ap.
23	Samedi	r†	4 *Temps*, s.Thomas de Vile. év. cf. M
24	DIM.	b	4 *Ts*, s. Lin, m. 2*or Ms fer.*3 *s Thec.* 2M
25	Lundi	b	19 *et* 4 *Sept.* N. D. de la Merci, (*Sol* de
26	Mar		Stigm. de s. François,(17) [s. Michel
27	Mercre	r†	ss. Cyprien &c. m. *inc. or. Miss. ut* 2
28	Jeudi	r†	ss. Cosme, &c. or Miss. ut 2
29	Vendre	b	s. Vinceslas, m. *lect* 1 *noct. ex Dom*
30	Samedi	b	s. Michel,, Arch.[5 *Sept. or. miss. ut*
			s Jérôme, conf. et doct.







OCTOBRE



Le ☉ entre au ♏ le 23, à 10h. 16m
☾ le 7, à 2h. 19m. Matin. ☉ le 13, à 6h.
☽ le 21, à 5h. 1m. Matin. ☽ le 29, à 6h.

MOIS.	JOURS.	Cl.	FETES.	Lev. H.M.	Cou H.M.	Jo
1	DIM.	b	20 *et* 1 *Oct.* sol du s. Rosaire, M	5 59	5 40	Ba
2	Lundi	b	*ss.* Anges Gardiens,	6 1	5 38	18
3	Mardi	b	s. Rémi, év. et conf. (du 1) *inc.*	6 2	5 36	
4	Mercre	b	s. François d'Assise, conf.	6 3	5 35	M
5	Jeudi	r†	*ss.* Placide, &c. m. 2*or. M. Fidel.* 3	6 5	5 32	2,
6	Vendre	b	s. Bruno, conf. [*Acunctis.*	6 6	5 30	
7	Samedi	b†	De la ste. Vrg. 2*or. Ms. s.Marci.* 3	6 7	5 28	
8	DIM.	b	21 *et* 2 *Oct.* ste.Brigite, v. M[*ssSrg.*2M	6 9	5 27	
9	Lundi	r†	ss. Denis, &c. m. 2*or.M. Acunc.*3 *ad lib*	6 10	5 25	
10	Mardi	b†	s. François de Borgia. conf. *or Ms. ut* 9	6 11	5 24	C
11	Mercre	vr†	*or. Miss. ut* 9 *Resp. ex* 1 *Dom.*	6 12	5 22	17
12	Jeudi	vr†	*or. Miss ut* 9	6 14	5 20	
13	Vendre	b†	s. Edouard, conf. *or. Miss. ut* 9	6 15	5 19	M
14	Samedi	r	s. Calixte, mart.	6 16	5 17	cs
15	DIM.	b	22 *et* 3 *Oct.* ste. Thérèse, v. *lect.* 1 *noct.*	6 18	5 15	17
16	Lundi	vr†	*or. Miss. ut* 5 [*de Scrip. occ.* M	6 19	5 13	Gr
17	Mardi	b†	ste.Hedwidge, veuve, *or.Miss. ut* 9	6 21	5 11	en
18	Mercre	r	s. Luc, Evengeliste.	6 22	5 9	
19	Jeudi	b	s. Pierre d'Alcantara, conf.	6 23	5 8	T
20	Vendre	b	s. Jean de Canti, cf. *in* 2*iste confessor.*	6 24	5 6	mo
21	Samedi	b†	De la Ste. Vierge. 2 *or.* miss. *Hilar* 3 *ss.* [*Ursul, etc.*	6 26	5 4	Ne
22	DIM.	b	23 *et* 4 *Oct.* N. D. De la Victoire. M	6 27	5 3	
23	Lundi	vr†	*or. miss. ut* 5 *inc.*	6 29	5 1	Co
24	Mardi	b	s. Raphaël, Archange, dupl. maj.	6 30	4 59	1
25	Mercre	r†	ss. Chrysante, &c. m. *or.Miss. ut* 9	6 32	4 58	14
26	Jeudi	r†	s. Evariste, m. *duce* 1 *lect. ex Dom.*5 *oct*	6 33	4 56	
27	Vendre	vl†	De la Vigile, 2*or.conce.* 3 *eccl. vel pro P*	6 34	4 55	Ch
28	Samedi	r	*Jeûne* ss. Simon et Judde. ap.	6 35	4 53	25,
29	DIM.	r	24 *et*1 *nov.*6 *prim.lect.ex Dom.*1 *nov.Rel*	6 37	4 51	
30	Lundi	vr†	*or Msut*5[*ex dom.*3*post Epih.sol ss S et J.*	6 38	4 50	
31	Mardi	vl†	*Jeûne* De la Vigile,2*or m. de sp. s.*3 *vl.pP*	6 39	4 49	

NOVEM



Le ☉ entre au ♐ le 22 à 6h.
☽ le 5, à 9h. 30m. Matin. ☉ le 1
☽ le 20, à 1h. 40m. Matin. ☽ le 2

MOIS.	JOURS.	Cl.	FETES.	Lev. H.M.
1	Mercre	b	TOUSSAINT, *d'ob. oct.*	6 41
2	Jeudi	n	Les Trespassés.	6 43
3	Vendre	b†	de l'oct. 2*or Ms. de spir.*3 *eccl.vel pro P*	6 44
4	Samedi	b	s. Charles ev. *m.* 2 *vesp. com. s. Patron.* [*ante alias com*	6 45 6 47
5	DIM.		25 *et* 2 *nov.* Fête Patron. *lt.* 3 *nt. D* 4 *epiph.* [*miss et vesp. sol. s. Pat. com. oct. et dom.*	6 49
6	Lundi	b†	De l'Oct. *or. Miss. ut* 3	6 51
7	Mardi	b†	De l'Oct. *or. Miss. vt* 3	6 52
8	Mercre	b	Oct. de la Tonssaint *A cap. de Seq.* M	6 53
9	Jeudi	b	Dédic. Basil,duSauveur,*A cap de seq.*M	6 55
10	Vendre	b	s. André Avellin, conf. M	6 56
11	Samedi	b	s. Martin, év. . . M [*ex dom.* 5 *ep.*]	6 57
12	DIM.	vr	26 3 *nov.*6 *prim. lect. ex dom* 3 *nov.Rel.*	6 59
13	Lundi	b†	s. Didace, cf. 2*or.Ms. Acunc.* 3 *ad libit.*	7 0
14	Mardi	r†	s. Martin. m. *or. Miss. ut* 13 (12)	7 1
15	Mercre	b	ste. Gertrude, vierge.	7 2
16	Jeudi	vr†	2 *or. Miss. Fidel.* 3 *Acunctis.*	7 4
17	Vendre	b†	s. Gregoire Thaum.év. et cf. *or.m.ut.*13	7 5
18	Samedi	b	Dédicace Basiliq. des ap. *a cap*	7 7
19	DIM.	b	27 4 *nov.* ste. Elizabeth, 9 *lect. hom.*	7 8
20	Lundi	b	s. Félix de Valois, cf. [*dom.*6*epiph.*2M	7 9
21	Mardi	b	Présentation de ia ste. Vierge.	7 10
22	Mercre	r	ste. Cécile, vierge, et mart.	7 12
23	Jeudi	r	s. Clément, pape, mart. M	7 13
24	Vendre	b	s. Jean de la Croix, cf. *inc. fer.* 3 5	7 14
25	Samedi	r	ste. Catherine, v. et m. [*et* 6 M	7 16
26	DIM.	vr	*Jeûne* 28 5 *nov.* 6 *prim. lect. ex dom.*	7 17
27	Lundi	vr†	*or. Miss. ut* 16 [24 *pt. sol* s. André M.	7 18
28	Mardi	vr†	*or. Miss. ut* 13	7 20
29	Mercre	vl†	De la Vigile,2*or.Ms.s. Saturnin*3*conced.*	7 21
30	Jeudi	r	s. André, ap.	

DECEM



Le ☉ entre au ♑ le
☽ le 4, à 4h. 47m. Soir.
☽ le 19, à 11h. 19m. Soir.

MOIS.	JOURS.	Cl.	FETES.
1	Vendre	vr†	Inc. fer 4. 5. et 6 2or Ms Fidel. 3 Acunct
2	Samedi	r†	ste.Bibiane, v. m. 2 or Ms. Acunct. 3 ad lib
3	DIM.	vl	1 De l'Avant,) sol s. Frs. Xavier.)
4	Lundi	b	s. Pierre Chrysologue, év. et dr. 2M
5	Mardi	b	s. François-Xavier, conf. (du 3) 2M
6	Mercre	b	s. Nicolas, év. et conf. M
7	Jeudi	b	s. Ambroise,év. dr. *vp.de seq. com.præM*
8	Vendre	b	CONCEPTION, dupl.2 cl. *d'ob. oct.* M
9	Samedi	b†	De l'Oct: 2*or. Miss. fer.* 3 *de spir. S.M*
10	DIM.	vl	2 de l'Av.2*or Ms. ct.* 3 *s. Melch.* 2M
11	Lundi	b†	s. Damase, p. et cf. 2*or Ms.de oct.*3 *fer.*2M
12	Mardi	b†	De l'Oct. or Ms. ut 9 M
13	Mercre	r	ste. Luce, vierge et mart. 2M
14	Jeudi	b†	De l'Oct. or Miss. ut 9 M
15	Vendre	b	Oct. de la Conception. M
16	Samedi	r †	s. Eusèbe,év.m.2*or Ms.fer.*3*deus.qui* M
17	DIM.	vl*	3 de l'Av. *Ad Magnif. ant. O Sapientia*
18	Lundi	b	Expect. de la ste. V. dupl. mag. in Præf. [le inexpectatione. O Adonai.
19	Mardi	vl†	*Ad L.et H.ant. Rorate Ad Mag. Radix dupl*
20	Mercre	vl†	Jeûne 4 Ts. lect. Hor. Prophetæ O clavis [dupl. miss. propr. 2 or. Vig. 3 Deus qui
21	Jeudi	r	s. Thom. Ap. Ad. Ben. Nol. Ad Mag. O Oriens.
22	Vendre	vl†	Jeûne 4 Ts. Ad L. et H. constantes Ad Mag [O Rex. Dupl
23	Samedi	vl†	Jeûne 4 Ts- Ad. L.et H. canite ex L. Dom. [ad canti. audite. expectetur. ad Bened [Ecce. completa. O Emanuel dup
24	DIM.	vl*	4 Vigil. Ad L. et H. dupl. (*sol* s. Thomas
25	Lundi	b	NOEL, (*d'Ob.*) *Octave.*
26	Mardi	r	ST. ETIENNE, *Oct.* de dév. M
27	Mercre	b	ST. JEAN, Evang. *Oct.* 2M
28	Jeudi	r	ss. Innocents, Octave. 3M
29	Vendre*	r	s. Thomas, év. et mart. 4M
30	Samedi	b	De l'Oct, ce Noel. 3M
31	DIM.	b	s. Sylves. P. et Conf. 9 Lect. et Com. Dom. infr. oct. et 4 oct. vesp. de seq. sine com. 5M