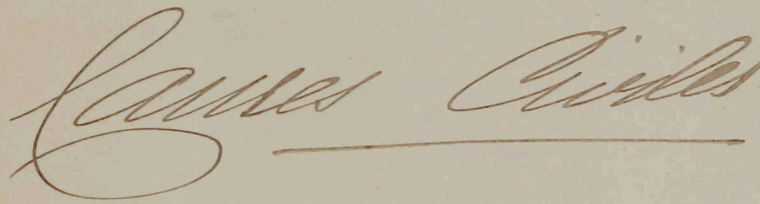

and the citizens of certain towns granted County rights as London, York - Bristol &c. & made liable to County duties —

So here of district — the rights of the residents are domiciliary, & cannot be taken away by implication, or without express law — It is a droit personnel in the Fr. Law, that attaches to the person this état. —

Any person so domicilié, is entitled to all the rights of a member of a County in Eng — in the single case excepted by law, of electg a member of the House of A — and being a member of a County, is entitled to sit as a Juryman tho' he be not of the vicinage, the whole body of the County being so considered — And such must be the legal construction upon the present division of the Province wherever a resident of the district — and not of the Cities and banlieus of Montreal & Quebec — are considered as qualified to sit as Jurors —

How would a contrary construction of the law operate — There are parts of the Province, and those inhabited and not inhabited without the limits of any County as designated by the proclamation of 1792 under the Stat. — Could persons be tried for Crimes & offences committed, not within any County? —

On Rule Nisi

1st Obj: want of Teste to Warrant —

Should be in the Kings name — 4. Bl. 290.
Should set forth Cause for wh made 2 Hale. 113 —
Should be under Seal
Should set forth time & place of making — and
Be directed to the proper Officer —

2 Hale — 113
1 do — 583

Ld. Hale says such warrants after Indt. shall be in the Kings name — But he does not consider a Committ by the same Court must be made in the Kings name, or under Seal, or expressly state the Cause of Comit. — but generally to answer — and may be made Viva Voce. —

4. Hawk. 174 § 102. 103. Such Error in Process does not vitiate —

1 Tid. Prac. 88 Dated a day in Term —

1. Venire ~~facias~~ process —

see 4. Bl. 319 —

1 Starkie. 273.

Law Dic. Tit. Process —

4 T. R. 506.

2 Writ not tested in name of Ch. Just. — in every other respect — 4 Hawk. 174

3 Issued sealed 10 days after rising of Court

4 Signed by Deputy Clerk as Deputy Clerk of Crown —

5 Com. Dig. Tit. Officer (D 5.)

1 Salk. 95. b. Parker. v. Kett —

Poth. Vente
N° 86. — Le Vendeur est tenu des evictions dont il y avoit une Cause, du moins un germe existant dés le tems du contrat de vente, soit, qu'elles procédent, soit qu'elles ne procedent point du fait du Vendeur —

Par example — si quelqu'un a vendu une chose qui ne lui appartenoit pas, ou qui etoit hypothequée, soit à ses dettes, soit à celles d'un autre, ou qui etoit affectée à quelque droit que ce fut, soit ouvert, soit non encore ouvert, qui donnat, ou qui dut donner un jour à quelqu'un une action pour se faire delaisser la; en tous ces Cas le Vendeur est tenu des evictions qui pourroient survenir soit de la part du proprietaire, soit de la part des créanciers hypothecaires ou de ceux qui des le tems du contrat avoit un droit ouvert, ou meme encore informe, pour se faire delaisser la chose: Car dans tous ces Cas, la Cause d'ou procéde l'eviction, existoit dés le tems du Contrat. —

Ce que c'est qu'eviction. —

Id. N°-82.

Evincer, proprement, est, oter quelque chose à — quelqu'un en vertu de Sentence — evincere est aliquid vincendo auferre. — Eviction est le delais qu'on oblige quelqu'un de

de faire d'une chose en vertu d'une Sentence qui l'y condamne.— Ce nom d'Eviction se donne aussi dans l'usage, et à la Sentence qui ordonne ce délais, et même à la demande qui est donnée pour le faire ordonner.— C'est pourquoi les demandes en revendication, les demandes en action hypothecaire qui sont données contre quelqu'un, sont appellées dans le langage du Palais, des Evictions—

C'est en ce sens qu'on dit que le Defendeur est obligé de defendre et de garantir l'acheteur de toutes evictions, par rapport à la chose vendüe; c'est à dire, qu'il est obligé de le defendre de toutes les demandes, soit en revendication, soit en action hypothecaire, ou autres qui pourroient etre données contre lui par quelques personnes que ce fut, pour lui faire delaisser la chose vendüe, et de le garantir de toutes condamnations qui pourroient intervenir contre lui sur lesdites demandes; et que dans le cas ou le vendeur ne pourroit empêcher que l'acheteur fut contraint à delaisser, il doit être tenü des dommages et interets de l'acheteur.—

Id. N°102 Du Trouble. —

Cette obligation (de Garantie) renferme celle de — defendre l'acheteur de tous troubles & evictions. — C'est pourquoi, non seulement l'eviction, c'est à dire, le delais que l'acheteur seroit contraint de faire à un tiers, de l'heritage qui lui a été vendu, donne lieu a cette action mais meme le simple trouble — c'est à dire la simple demande que donne contre l'acheteur un tiers qui pretend avoir un droit existant dés le tems du contrat de vente, de se faire delaisser cet heritage. —

Lorsque l'acheteur n'est pas en possession de la chose qui lui a été vendüe, le trouble consiste dans le refus que lui donne un tiers qui s'en trouve en possession de la lui faire delaisser. —

N° 103. L'objet immediat & primitif de cette action, est la prise de fait et Cause pour l'acheteur - c'est à dire, la defense de la Cause de l'acheteur, dont le vendeur est obligé de se charger —

A demande en Justice is a trouble —

Id. N°108. Quoique l'acheteur ait la faculté de former son action en garantie aussitôt qu'il est troublé par

par une demande donnée contre lui — neanmoins s'il a manqué de la former, il est toujours à tems de le faire, non seulement jusqu'à la Sentence de condamnation, mais même depuis la Sentence — Il n'y a que la prescription ordinaire de trente ans qui puisse l'exclure de cette action — et le tems de cette prescription ne commence a courir, que du Jour du trouble qui lui a été fait par la demande donnée contre lui. —

N°. 280. Même apres que le Vendeur l'a livrée, il ne pourroit demander le prix, si l'acheteur etoit troublé en sa possession par quelque demande en revendication, hypothecaire ou autre, jusqu'à ce que le proces fut terminé — Si neanmoins le proces pouvoit durer longtems, il pourroit être reçu apres avoir pris le fait & Cause de l'acheteur, a exiger de lui le prix; mais il faudroit en ce cas, qu'il lui offrit une — bonne et suffisante Caution de rapporter en cas d'eviction. — S'il y avoit des fortes presomptions que la demande donnée contre l'acheteur, est une demande qu'il se seroit fait donner par une personne affidée pour vexer le Vendeur et l'empecher de toucher le prix, faute de pouvoir trouver une caution, le

Vendeur

vendeur devoit être en ce cas dispensé de la donner. —

N° 282. L'acheteur peut bien se défendre de payer lorsqu'il est troublé, mais s'il a payé avant le trouble, il ne peut demander ni la restitution du prix, ni caution pendant le Proces. — Meme avant qu'il ait payé, tant qu'il ne souffre aucun trouble, il n'est pas recevable à demander au ~~demandeur~~ vendeur caution du prix dont le paiement lui est demandé — Arrêt du 5 Août 1669. dans Soefve. Cent. 4 chap. 4. —

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1 Bourj. 478. art. 17. A l'egard de la decouverte qu'un acquereur auroit fait des Créances hypothequées sur l'Immeuble par lui acquis, elles ne suspendent pas l'exigibilité du prix, encore qu'il fut adjudicataire sur une licitation; en effet elles ne tendent pas à une eviction imminente & inevitable, et l'acquereur en a volontairement couru les risques en ne stipulant pas l'interposition d'un decret volontaire —

Nota — Il est sur ce l'opinion commune au chatelet qu'on y fonde encore, mais assez indirectement sur la maxime — "nemo debet esse ignarus conditionis ejus cum quo contrahit", qui ne s'applique exactement que dans le cas du Contrat volontaire, et non dans celui de la licitation.

2. Bourj.ne 544. art. 6. De même si les hypotheques, comme francs & quittes et qu'ils ne le soient pas, c'est stellionat, y ayant sureté promise et non donnée; Stellionat, qui comme le précédent ouvre les droits & actions qu'on va expliquer —

to the door in order to go out, ordered Baker to open the door &c. he refused, upon this Capt Corey slept up to him when it was opened, either by Capt. Corey or by Baker - There must be 20 persons in the room - when we was at the door he observed a crowd of people with two Crates, and a person in each parading them near the place &c. We understood as an intimation that he & those with him would have been paraded in that stile if they did not go off

That Calvin White, appeared very active and took a great part in the business, but does not remember what he said, but it implied that we had no business there - saw him at the time we came out of the room -

Saw Jonas Coburn there, who appeared to take an active part with the mob and to be one of them

Saw Martin Rice there, also, who took a part with the others - heard him say in substance, that he that we had no business there -

There were upwards of 30 persons collected there upon that occasion - it was a tumultuous meeting and he that the minds of the people were much agitated and his impression was that some personal injury would be done, if he did not desist proceeding further

The Militia had been called out to train that morning or for a review

The

This continued for 2 or 3 hours while they remained there — and we went away without examining the Prs or committing them — and being told by Capt Corey that the people had been drinking and that he could not control them, the wife that it most prudent to desist.

x2

Has resided in the Townships for 15 years — has been at the trainings of Militia in Dunbarton and after the training is over it is usual for the Capt to treat the men, and the men amuse themselves various ways — on these occasions some of the Militia men have guns —

That it was John Farnsworth who gave in the information on oath respecting the rescuing the goods — and on 26th June, some days after, he issued his warrant on the suspicions given him of several persons —

That he delayed till training day at Hamburgh when he knew Capt Corey would be there, and expected through his means many of those persons would be arrested —

Cannot say what these persons were doing when we first went to Burleigh's house

Thinks he ordered the three persons to be apprehended, before he issued a warrant for this purpose —

When he arrived at Burleighs, he saw a number of persons in the bar room and

about

about the house —

That Calvin White made use of abusive and insulting language to Wits but he does not recollect the words —

Alexander Brown. Justice of Peace for Dist, & lives in Dunham — was called upon to give his assistance in arresting persons concerned in rescuing the smuggled goods — went W. last Wed. to Stanbridge to house of Burleigh — then were three persons brought in as Pris[rs] when they were brot. into room, a number of people rushed in — heard now and then a gun fired about the house — was informed it was an improper time to hold ex[am]n on a training day, and it was dropped — the Pris[rs] were taken without a warrant, & the warrant was made out afterwards — it was said by Calvin White that it was an improper time to hold the ex[am]n and said it was not right for the Justices of Dunham to come there — another man told him the same things, and W. that it was better to desist, as it was said by one Spicer, that if the Justices continues to act there would be difficulty and perhaps blood shed — There ~~appeared~~ was no abuse used towards the Wits — nor does he recollect that abuse was used to any other person — W. considered the carrying about the crates, meant a menace, that something would be done to some one. —

x[d] —

That it was M[r] Knight who proposed to W. to go to Stanbridge, & told him that Mr

Whitney

Whitney was going — Mr Whitney also
wished him to go. and was told there were
no Magistrates at Stanbridge —

The Militia were training when they
arrived at Stanbridge, & some of them had
guns — saw no man drunk among them.
The room to gt W^m went to was empty when
they went there, the first thing done, was to
call Capt Carey, & Mr Whitney gave him
a small slip of paper with the names of three persons
to have them arrested, Capt Carey, asked some
questions as to the propriety of arresting these
men without a warrant — but went out
and brot them in, first two & afterwards the
3^d —

That it was more from what he heard than from
what he saw that he was induced to think
it was better to desist from proceeding & it

Ephraim Knight — was at Stanbridge on 26 June w^n
Mr Whitney & Mr Brown — saw three persons
brot into the room when they were — there was
a great deal of noise and a great deal of
tumult, people pushing one another about
saw Jonas Coburn who seemed very active,
but cannot say what he did —

That it was said the most proper day to go
to Stanbridge would be the Militia day when
the officers of Militia w^d be there to sit. there

assistance

assistance on account of the opposition there was to the authority being used to proceed in the business. The moment Wm arrived he perceived a disposition to oppose them — particularly by one Andrews, who said the Magistrates were damn'd fools and had no business there — John Wells also said something, meaning, that they had no right to be there and they would do no business if they staid — Wm saw Calvin White, Luke Baker & Martin Rice. saw Abner Bigsby there — cannot say these men did any thing — He saw two Crates carried about in the streets — heard some one hollowing out murder — heard guns fired there — Wells fired one — as far as he recollects — That Coburn stuck up a paper in the bar room door of the house — said he thought it was damnd hard that this mans goods should be taken, ~~and that~~ meaning Steers' goods — Said that if the all those from Dunham did not leave the place it would be tough times for them — and it appeared to Wm he shewed great anxiety to injure the party from Dunham — the persons assembled there appeared to be all supporting one another. Wm considered it was not safe for the party to proceed further, or there would have been blood shed —

Heard Calvin ~~White~~ White saying they had no right to be there —

x[3]

Knew that the Militia were in the habit of meeting at Burleigh's on training days — There were many of them on that day who were laughing and joking others were not — was in the room when Sutton very short time, as he was afraid to remain there — this was from the conduct of those persons & what Capt. Covey told him — cannot speak to any particulars just that was done by them persons, except firing guns about the house, and threats that were — particularly from the paper put up in the bar room by Coburn — stating that D. Knight & others from Dunham and others be off before dun-down or take what follows. wit. requested Vaughan to take down this paper and take care of it — and saw Vaughan take it down —

That no person offered personal violence to the wit —

That the carrying about the crates was after the Ps were discharged —

Nathaniel Stevens, lives at Dunham — was at Standbridge wt. Knight & others — 3 persons were put under his charge in the room & had been ordered for that purpose — he rec'd the three men from Capt Covey, and soon after the room was so full that he could not distinguish his prisoners from

from the rest – they began to dance and make a noise, when he requested some of them to go out of – they did – went to dinner when he heard a terrible noise in the room where he left the prisrs in charge of Capt Carey or Lieut Carey – and when he got up from dinner he did not go back to that room, but went out of the door into the Street – heard guns fired, but did not go near, as they seemed very heavy – was afraid of any accident in case of their bursting –

Saw Jonas Coburn nailing up a paper in the inside the bar room door – D. Knight & others from Dunham be off before night or suffer the consequences – & signed – Training day this was the contents of the paper – That Coburn seemed rather violent, but spoke particularly of Knight

Heard Spicer, and Capt Carey, say, they had better be off before night or there would be blood shed –

Saw 2 Crafts paraded about by a number of men in the Street, of – with – took to be a warning to him & his party to clear the place –

a good many appeared to be in liquor & noisy – & the guns kept firing a good deal –

All this was in good humour among themselves

and

Witness heard nothing of menace against others —

Thinks it was Luke Baker & Coburn who were in the Cradle —

X^d

That he was asked by Mr Whitney and Mr Knight to go to Stanbridge —

Did not think there was any impropriety in the persons coming into the Room when the Prs were —

It is usual on training days for the Officers to give their men something to drink after the business is over, & they will then continue this among themselves afterwards and amuse themselves in their own way

Dorlin White asserted Wr as one of the Keepers of the Prisn and conducted himself quietly while he saw him —

That the intimations he Wr heard from Spicer & Corey he took as a friendly hint

Erastus Spicer, was at Stanbridge when magistrates from Dunham were there — saw nothing that was indecent or unbecoming, but movement — heard no menaces nor saw any thing like injury done or threatened to any one —

Whitemen

Fowler
v
Elderkin
&
Ferguson-
Gilman Opp^{ts}

On Oppositions of Ferguson & Gilman claiming preference on monies in the hands of the Sheriff, by virtue of their mortgages.

—

On the Defend^{t} Elderkin sold a lot of land to the Opposant Ferguson for the sum of £ The Plaintiff Fowler having some time afterwards obtained Judg^{t} agt the Defd^{t} seized the same lot of land as the property of Defd^{t} to which Sale Ferguson put in his Opposition, but not having been able to substantiate his right to the land for want of a prise de possession, his oppos^{n} was dismissed and the land ordered to be sold —

This land and several other lots being now sold Ferguson claimed a preference to the monies arising therefrom, as by the Notarial Deed of sale made to him by Defend^{t} he acquired a mortgage upon all the Estate of the Defend^{t} for the performance of his obligation to put him in possession of the lot of land so sold as well as for every other obligation resulting therefrom, failing which to be paid his damages —

The Plff and Gilman who were Creditors by Judgment of the Defd^{t} subsequent to the date of the

the above deed of Sale to Ferguson, opposed his right, and alledged, that Ferguson could have no recourse or right of action whatever agt. Elderkin as it was his own laches not to have possessed himself of the lot of Land sold to him by Defdt. in such manner as to secure the title - and whatever right he might have agt. Elderkin, he could not exercise it to the prejudice of the Pltffs. Judgment

The Court was of opinion that Ferguson did acquire a mortgage on the property of Elderkin by virtue of the Deed of Sale, to recover back the monies paid to him, if that Sale had not been effected, as was the case in the present instance - and Judgt. of Distribution was drawn accordingly -

Rice
v
Taylor
&
Odell oppt.

On Opposition claiming a horse as property of Opposant

It appeared from the testimony that the Defendt having purchased a horse, and not having money to pay for him, he gave his promissory note jointly with the opposant Odell, and as a Security to Odell agt the payt of the note, the horse was delivered to him to keep until the note should be paid by Defr. It did not clearly appear whether the horse seized and claimed was the same as that which Taylor had so purchased, nor was it ascertained in whose possession the horse was at the time of the seizure either by the Sheriff's return or testimony adduced.

The Court ordered, that the return as to the seizure of the horse should be amended by stating in whose possession he was at the time, and also the colour of the horse so as ascertain the identity.

Poudré
v
Savoie

On action en bornage.

The action being against the Church wardens of the parish of Blairfendie to establish a line of division between Pltffs. land, and the Church lands and the Defendts having adduced as witnesses on their behalf several parishoners, they were objected to by the Pltff as interested. — The Court were of opinion that they had not such an — immediate interest as to render them incompetent* but considering the great contrariety in the testimony, they ordered a Survey of the premises in contest to be made, pointing out the old fences & boundary marks and the present state of the lands, so as to apply the testimony with more precision to the case. —

* see Peake's Ev. p. 149.

Deroches
vs
Deroches

Action for 1000^{tt}. stipulated to be paid Pltff by Deft^{t}. in a Deed of Donation —

Pltff acknowledges to have received 700^{tt}. and prays Judg^{t} for balance 300^{tt} —

Deft^{t}. says, that Pltff has not credited Deft^{t}. by his Declaration for the 700^{tt}. he now acknowledges to have received, which compelled Deft^{t}. to appear & plead to the action & therefore no costs should be allowed Pltff — admits that he still owes the 300^{tt}. to Pltff —

The Court gave Judg^{t}. for 300^{tt}. in favor of Pltff with costs as in a Cause under £30 Stg —

Lacombe
vs
Ducogne
Curator &
Divers Opp^{ts}

The Opposants claimed to be paid by preference out of the proceeds of a certain quantity of wood seized and sold at the suit of the Pltff as belonging to Defend^{t} — they the oppos^{ts} being the persons who had been employed in cutting and transporting the said wood to house of Deft^{t} —

The Pltff objected to the privilege claimed by the Opposants, as they had not identified the wood sold to be same as that cut by them — & further that by delivery of wood they lost their privilege —

It

It appearing to the Court from the testimony adduced that the wood was sufficiently identified, and that the privilege of the opposants did attach thereon for the payment of their labor, but there not being sufficient proof to shew the exact amount for which the opposants were entitled for their labor, the Court admitted them severally to their oaths to establish this point and ordered a Judgt of Distribution accordingly

Rossel. appellt
&
Noel, vre Drapeau
& al. —— Respts

The decision of this Cause depends principally upon the sufficiency & validity of the titles under g.t the Respts claim, as having been made and granted to their predecessors by the Govr. & Intendt. of the Country, who in respect of such grants were invested with sufficient power & authority of the King of France — These titles consist of two Grants or Concessions made to Louis Lepage and Gabriel Thivierge by Mgrs. de Frontenac and De Champigny on the 14 Nov. 1695, and 7.t May 1697. —

It has been urged against these titles, that they were null and void, inasmuchas they had not been confirmed by the King of France, within the year, which it is said, must necessarily be done à peine de nullité. — The arret of the French King of 20 May 1676, which has been referred to as establishing this principle, goes even further, and enacts the same nullity for the non-performance of the Conditions of the Grant as to the settlement and clearing of the lands, as well as to the non-ratification of the title within the year — Yet we know that this principle was never rigorously adhered to, and even that a contrary practice obtained in the Courts, by giving a further day, where it appeared that any thing had been done towards a performance of the Conditions of the Grant — And eventually we find, this more lenient and equitable principle, came to be settled into Law, as the rule of proceeding in the Courts — For this we refer to the — Declaration du Roi concernant les Concessions dans les Colonies, of the 17 July 1743, which, after reflecting on the irregularities in practice and the contradictory opinions held in the Courts on the subject of the Grants ~~and tenures~~ of Lands, and their reunion to the Domaine of the Crown, and in order to establish a uniform system of proceeding in this respect, directs the Governors and Intendants, and others authorised to make such grants — "Qu'ils ne pourront concéder les terres qui
" auront été une fois concédées, quoiqu'elles soient dans le cas d'être
" reunies, qu'après que la reunion en aura été prononcée, à
" peine de nullité des nouvelles Concessions." — a principle

which

which has been generally followed and observed by the Courts in this ~~Country~~ Colony. —

The Grants or Concessions in question were never re-united to the Kings Domain, nor any thing done to call in question their validity, and they must be held at the present day to have all their force and effect as a Conveyance by the Crown to the individuals therein named — And if we were to follow up the principle of law so established by the above declaration du Roi, not only are these titles intact, at the present day, but the subsequent conveyance made by the Crown to the appellants, without such re-union, would ~~would~~ could of itself be a nullity, and ~~could mean~~ give no right to the present action.

In deducing title from the original Grantees, the Respondts have not shewn such satisfactory evidence, as would enable them upon that ground alone, to maintain their right — Acts of ownership evidently appear to have been exercised by different individuals on certain parts and portions of the land contained in the Original Grants, by various deeds of sale and conveyance, made at different times before and since the Conquest of the Country, but the rights of ~~the~~ many persons to make such conveyances, are not sufficiently apparent — By means of these Conveyances however, Drapeau came into the possession of this Estate ^ or Seigniory and his right of property therein has been acknowledged by the Crown, by receiving from him the payment of the Quint, and granting to him, as the Vassal of the Crown, Lettres de Terrier for the said Seigniory. — This right ^ ##

Some error must have existed in regard of the Grant made of the Township of Hamilton, from the peculiar circumstances attending it — In the year 1802, we find an order of the Council in favor of William Ross and his Children for a grant of Land to them, and instructions appear in consequence to have been given directing a survey of the Township of Hamilton for this purpose — This survey was made, but no Letters patent issued thereon granting the Township

has further been acknowledged by some of the Appellts, and his possession for a long series of years known to them all, and it would be wrong now to call in question what has been so confirmed.

Township.— Upon a subsequent application of the widow and heirs of Ross to obtain this grant in 1807, we find a report of the Council, rejecting the same — but here we find that this arose from an examination had by the officers of the Crown of the rights and claims of Drapeau, and we must presume that had those claims been found insufficient, the Crown would then have proceeded to effect a reunion of the lands and make the grant demanded — The renewed application of the heirs of Ross in 1824, would appear to have been acceded to, without any consideration of the claims of Drapeau, and probably without a knowledge of their existence, as we cannot think, that Letters Patent would have issued for erecting the Township of Hamilton, had it been known, that there existed already a — Grant for the same extent of land in favor of other persons —

Without entering upon the consideration of several questions agitated by the parties in the Cause which we consider immaterial for its decision, we are of opinion that the Respondents are entitled to hold the Lands now claimed, under the titles they have produced — and we therefore confirm the Judgt appealed from with Costs —

Dominus Rex appellt
James Hunt Respt

Titles produced by the parties —

1. Vente par adjudication au Sr Taché en date du 15e Juillet 1749 - signé, Daine - sur une Saisie Reelle en emplacement de —

2 Requête par Mr Taché presentée au Gouvernement & Intendant en date du 25 Fev. 1752. — Ordonnance sur icelle - dans Suite ~~du Procès Verbal d'alignement fait en conséquence~~ —

"Vû la presente requête nous permettons au Sr Taché de "faire elever un quai au-devant de son emplacement "pour couvrir le rocher qui y regne." — 25 Fev. 1752 —

3 Vente par led. Sr Taché & son epouse au Sr Henri Morin & son epouse, en date du 28 Juin 1753 - Panet. Nre —

same lot, with the right & permission he had obtained to build a Quai —

4 Procès Verbal d'alignement, made by the Grand Voyer at the request of Morin, dated. 30e. Augt. 1753 —

These are the material titles - there is however a regular chain of title down to Respondt —

The object of the present action was to recover from the Defendant a certain spot of ground as belonging to the Crown upon which a Wharf has been erected, on the principle that the Defendant holds and possesses the same without any right or title — The Defendant has set up a title to this wharf - by conveyance from the Crown,

and

and by prescriptive possession — The first only we shall consider, as the latter may not be found to apply, nor is it requisite to have recourse to it in this case —

In the year 1749. we find that à Mr Taché became proprietor of a certain lot of ground, or emplacement & maison sise en la Basse ville sur une Ruette qui est au bout de la rue notre Dame, aboutissant au Cul de Sac" — and in 1752. he applied to the Governor & Intendant at Quebec for permission to erect a wharf in front of this lot on the side of the beach de faire un quai vis-a-vis du coté de la greve du Cul de Sac, sur un Rocher qui s'y trouve. — To this effect permission was granted — "Nous permettons au Sr Taché " de faire elever un quai au devant de son emplacement " pour couvrir le rocher qui y regne" —

It has been argued that this right so granted to build a wharf, did not grant the soil on which it was erected, and although no words are here used as conveying a right of property in the soil, yet when we consider the Language of the French Grants in general, the Liberal interpretation to be put on all grants made by the Crown, and the end and object for which the permission for constructing this wharf was granted, we must be of opinion, that in granting this permission, it necessarily included a grant of the soil also — but cannot construe this grant in a way, that would have frustrated the applicant to build a wharf, and to deprive him of the use of it, by depriving him of the soil on which it was built —

Taking then the permission here given to convey a right as well to the soil as to the wharf built upon it, what have we in evidence before us to say, that this permission has been abused, or that any undue encroachment has been made upon the rights or property of the Crown? —

The

The extent of this grant, was for building a wharf on the beach side of the lot, in order to cover a certain Rocher, for the greater ease and convenience of shipping — Now we have nothing to ascertain that any greater extent of the beach has been occupied for this purpose than was necessary, or intended to be granted — we do not know what the extent of this Rocher was, and consequently cannot say, whether there has been any undue encroachment — It has been argued, that it was the duty of the Respondt — to shew title for what he thus held, and to shew that his possession did not extend beyond his grant, — but under the Circumstances he appears to shew enough — with the title he produces, he has shewn that the Wharf has existed for the last 40 or 50 years to the same extent as it now does, and although we cannot admit this in aid of any prescription against the ~~right of the~~ Crown, yet it may be admitted as interpreting the title produced by the Respondt as being a possession consistent with that title, when nothing to the Contrary appears — Had the late changes which have been made upon the wharf consisted of any new encroachment ~~upon the beach on the right of the Crown~~, it must have been removed, but as these changes consist merely of a different mode of possession of what had previously existed, we cannot interfere with what was the right of the party to make —

Judge of K. B. confirmed —

J. Gow Smith Appt
and
Peltier. — Respt

On the opposition of the appellt
afin d'annuller, on seizure of certain
real Estate claimed by him as his
property & in his possession. —

1st Quest — As to the regularity of the seizure, — the same
being alledged to have been made on property in the
possession of the Appellt who was a Tiers detenteur
and not the party condemned. —

There is no proof on record that the appellt
ever was, or now is in the possession of the
property seized. —

The seizure is made, as being on the
property of Mary Smith, the debtor, and
the presumption is, that she was in possn —

The right of the appellt rests therefore solely
on his claim as universal legatee of the
late Lauchlin Smith. —

But the claim of dower, if founded, is
preferable to that of the legatee —

1. Because L. Smith could not by will
devise or alienate the Dower of his child
2. The Douairiere, has the legal possession.

2d Quest — As to the renunciation of Mary Smith to her
right of Dower, in consequence of the stipulations
contained in her Marriage Contract with Toussd
her first husband. —

This Stipulation must be considered. (and
indeed is admitted on all hands) to be a
Resn —

Renn to the Succession of her father in consn of a sum of £300 — to be paid to her — The subsequent acceptance & discharge given by her and her husband — confirms it. —

The 251st art. Cout: requires that a Renunn be made to the Succn of the father, to entitle the Child to dower —

If Renunn be thus required — it cannot be presumed to be an abandonment of that for the obtaining of which, it is so required.

Douaire —

Parceque la Cout. le donne aux enfans comme une dette que le pere a contracté envers eux en se mariant, & non pas comme un droit successif, puisque il faut que les enfans renoncent à la Succession de leur pere, pour avoir le Douaire —

Ser. Dic. Droit, Vo Douaire, p. 579.
Poth. Douaire. No 350. —

Dower is given by law to the child — it does not proceed from the gift or consent of the father, and the child claims it as a Creditor of his father's Estate, and not as heir. —
Renn to a right as heir, cannot be presumed to comprehend a claim as Creditor — Therefore a Renn to a right of Dower must be express. —

Renn to a Succession not open — aliquo accepto, is not a sale of the right of the heir, so as to constitute an acte d'heritier — there can be no acte d'heritier in a Succession not open, and which may never accrue. —

3d Questn — The Douairiere, is obliged to bring back to her fathers Succession what she has received, before she can be entitled to claim her Dower. —

It is true, — The 252d art. of the Custom, requires, that the Douairiere shall make rapport to her fathers Succession, of what has been given her in marriage or otherwise — but it also says — ou moins prendre —

If

If the Creditor here claimed that the Dower should be delivered to him en nature - he would be held to make this rapport, before he obtained it — he only demands that it be sold - When it is converted into money, and the proceeds are before the Court — his claim will be restrained to take so much less than has been already paid to Mary Smith his debtor — But in this respect the rights of the parties are still open. —

Judgt. Confirmed w Costs —

Perron & al — appellants
and
Simard & al. Respdts

This was an action instituted by the Respondts, children of the late Franc. Boivin & Emerancienne Charlotte Gagnon, against the appellants also children of the said Gagnon, by Pascal Perron, her second husband, in order to obtain a partition of the Estate and effects left by their common mother the said Emerancienne Charlotte Gagnon, at the time of her decease. — To this action the Appellants pleaded for exception, that the said late Emc Ch. Gagnon, by her last Will and testament, made and executed before, Me Sasseville, public notary & witnesses, on the 9th April 1802, devised and bequeathed the whole of her said estate and effects, to the said Pascal Perron, her second husband, as heirs to whom the said Appellants are entitled to hold & retain the said estate and effects, as their own property

The validity of this will has been contested by the Respondents both as to its ~~validity~~ form, and to its effect — The objections taken to its form, are two, 1st That it is not stated on the face of the Instrument to have been "dicté aux notaires et temoins" — and 2d That it is not stated that the will was "relu", in the presence of the Witnesses. — On examining the instrument itself we are satisfied that these objections have no validity — as to the first — it is not founded in fact — and as to the second — although after the

the word "relu" the words "en presence du notaire et temoins" are not again repeated, yet this has been held to constitute no legal defect in point of form, + as may be seen by the opinions held ~~on that point~~ thereon

+ where the act appears to have been passed before the Notary & Witnesses.

"Il suffit, qu'il paroisse par l'acte et par la signature
» des temoins qu'ils ont eté presens au testament,
» sans qu'il soit requis de mettre, que la lecture du
» testament a eté faite en leur presence — ainsi, quoique
» la Coutume de Paris porte en l'article 289 "" et depuis
"" à lui relu en la presence d'iceux Notaires, Curé, ou
"" vicaire general et temoins "," on n'a jamais requis
» qu'il fut fait mention, que le testament a eté
» relu en la présence des temoins" — So say Ferriere and Auzanet — and the reason is evident — that although in point of fact it may be necessary that the will should be thus relu to the testator in the presence of the Notary and the Witnesses, yet the law has not said, that in point of form, this fact shall be expressed on the face of the instrument as essential to its validity — Had the Respts alleged that in point of fact the will had not been so read over to the testatrix, they would have been admitted to make proof of it on an inscription en faux —

But the more material question here is, whether the testatrix had the power to devise her property to her second husband, to the exclusion of her Children, the Respondents by her ~~short~~ last marriage, which appears to have been the question determined by the Court below, against the Appellants, as the partition demanded by the ~~Appellants~~ Respondents has been awarded.

The

The arguments against this will are founded ~~principally~~ on the prohibitions of the antient law of the Country, and principally on the 279th article of the Custom of Paris, which interdicts all dispositions by the wife of the property on a second marriage to the prejudice of the first ~~Marriage~~ of her children. In favor of the will it has been argued that the Provincial Stat. of the 41 Geo. 3. ch. 4. has removed all the prohibitions of the old law, and gives effect to the will. — These arguments we shall now consider. —

By the British Stat. of 14 Geo. 3. ch. 83 s. 10 every owner of lands, goods, or Credits, having a right to alienate the same in his or her lifetime by deed of sale, gift, or otherwise, may devise or bequeath the same by his or her last will and testament — This statute enlarged the power of a Testator over his property in certain cases, beyond what the antient laws of the Country allowed — but in regard of the power of Legatees to take under such will nothing is said —

The doubts and difficulties which occurred touching the true intent and meaning of this act, occasioned the making of the provincial Statute above mentioned of the 41 Geo. 3. ch. 4, whereby a much greater latitude is given to a testator to devise and bequeath his property, and to the Legatees to take. — In the interpretation of this latter Statute we must not limit the power of the testator to give by will, merely what he could have given or alienated by act inter vivos, nor the capacity of the legatees to take, only what they could have received from the testator

testator by such act inter vivos, as it is evident from the very general and comprehensive words used in this Statute, the powers both of the Testator & of the legatee are greatly extended, and that the restrictions which were admitted under the old law to limit the power of the owner in the alienation of his Estate by many acts inter vivos, are now wholly removed where such alienation is made by last will and testament. — By this statute it is expressly enacted, that the husband may give to the wife and the wife to the husband, or to one or more of their children, as they shall see fit — This could not be done by the antient law of the Country but to a very limited extent, either by will, or by any act made inter vivos — It has also been held that the minor of 20 years of age can by will bequeath his moveable property to his tutor, Curator, or administrator of his property — which prior to this Statute he could not do — It is equally clear, that the parent may deprive his child or children of their legitime by will, for he can give his whole Estate to a Stranger — which prior to this Statute a parent could not do, by any act whatever — In all these cases the power of the testator over his property by will, is greater than what he could exercise by any act inter vivos. — The capacity of the legatees to take is also greatly extended — for all persons may take by will, except those in Mortmain;

and

and we cannot better shew the general and extensive powers given by this Statute, both as to Testators and legatees, than by considering the Cases where it has limited, ~~these~~ these powers, by particular exception; ~~as regards the power of alienation~~ ~~which do not regard~~ as regards the power of alienation ✕ the share of a Survivor in the Conjugal Community, and the Customary or settled dower of the Children ◇ — by which we are ~~bound~~ to understand, that every thing may be given and ~~disposed of~~ taken by will, except as ~~ordered~~ is here excepted — the maxim being, exceptio firmat regulam in casibus non exceptis. —

✕ this exception extends only to.

◇ as regards the legatee it extends to persons in mortmain only —

In the case before us, the 279th article of the Custom, founded on the Edit des Secondes noces, had restrained in the most positive terms the power of the wife to alienate her lands or goods to the exclusion of the rights of her children of her first marriage, either in favor of her second husband or of any other person, by any act whatever — The Statute says, she may devise and bequeath her lands and goods to her husband, whatever the nature of those lands may be, whether propres, acquets or conquets, without reserve, restriction or limitation whatsoever — any law, usage, or Custom to the Contrary in anywise notwithstanding. The plain meaning of which is, that all former laws restraining this power to give by will, are set aside — there is no particular portion of these laws which can be considered to be still in force in preference to the others, they are all equally abolished, and the power of giving by will is unlimited, except in the Cases of Communauté

and

and Dower, as above stated — The property here was in the testatrix, but the power of alienation was by the antient law restrained — the intention of the Statute was to take off this restriction, which it has effectually done. —

Louis Nadeau, Appellt
v
Fabrique of St Henri. Respts

Action de Complainte for disturbance in the enjoyment of a right of Servitude

Titles produced

13 June 1821 — Cession par le Curé & Marguilliers de l'Oeuvre & Fabrique St Henri à Messrs Valliers & Duvernet — This establishes the Servitude

28 Janv. 1822. Deed of Sale by the Sheriff to Chs Hebert and Louis Nadeau of 3/4s of the Pont de Peage — in question. —

12. Mai 1823. Bail par Louis Bolduc à Chas Hebert of his 1/4 of this bridge — here the Servitude in favor of the Church is specially reserved

11 Nov. 1823. Transaction entre Chas Hebert and Louis Nadeau, appellt — whereby Nadeau acquires all Hebert's right in the bridge & consequently bound to the Servitude, the same as Hebert was. —

As to the form of the action — it is regular —

see — 2 Bourj. p. 512. No 27. —
2 Fer. Gr. Comre on 186e art. p. 1520. No 7. —
1 Sarge. p. 218. —
Potts. possn No 90
N. Denist. vo Complainte §. 2. No 9
Rodier. on 1st art. 18 Tit. Code Civ. 2e quest —

Judgt of K. B. confirmed

Jones — appellt
and
Webber — Respt

On action as the Defendt, the master of a certain ship or vessels, called the for carrying one Watkins the appellants Debtor out of the Province without a pass —

Ch. J. Reid — & Mr Smith. dissentt

In ~~our~~ opinion the appellt has made out his case and is intitled to a Judgt as the Respondt and to a Reversal of the Judgt of the Court of K. B. dismissing his demand —

The appellt has proved —

1. That Watkins was his Debtor to the extent of £32. 6. 6 —
2. That the Respondt carried him out of the Province on board of his Ship
3. That Watkins had obtained no pass to leave the Province —

The nature of the debt incurred by Watkins was for monies which he had received for Mr Jones while in his employ as his Clerk, and which he had retained to his own use — In the opinion of the Court this was not a debt of that description ~~for which the Respondt~~ could be considered as coming

coming within the contemplation of the Ordinance so as to make the Respondts liable, and that although the appellt might have had his action agst Watkins for the same, yet as the Respondts could have no knowledge of such a debt, nor had the means of defence agst it he ought not to be made liable under a law which was so penal.

+ and the opinions & feelings of men will strongly incline agst its operation.

The law is no doubt highly + which makes it ~~and~~ desirable ~~on that account as well as~~ ~~of the opinions entertained respecting it, applaudm~~ that it should be repealed, so as not to hold out false colours to creditors who look to a remedy under it, which turns out to be a mere illusion — If the appellt in this case is not entitled to the remedy ~~it~~ this law offers, there is no case in which some nicety of distinction as to its application may not be adopted, so as to defeat its operation entirely —

This ordinance is to be understood according to the ordinary import of the ~~plain~~ words and ~~manifest~~ expressions it uses, ~~it says~~ which are plain & clear — it says — No master of any Ship or vessel leaving

the

" this province, shall carry away any person whatsoever
" without having a pass signed by the Secretary, under the
" penalty being liable to pay to the Creditors of such person
" all the debts he may have contracted in the Province

now the difficulty turns here upon the word
debt, ~~by~~ which I understand, according to
the general import of the word to mean — any
sum of money, which one man justly owes
to another — had the ordinance meant to
refer to a debt of any particular kind, such
as that due by Specialty, bond, obligation, Recognizance
or the like, it would not have failed to express it,
but by the general term debt, we ~~suppose~~ an action of debt
that ~~every~~ every demand for a sum of money due is the ~~old~~ kind of
debt ~~was~~ intended — and this is the more evident
from what is stated in the 2d section of this
Ordr — which says — That every Creditor intending to
oppose the granting a pass to any person who shall have
so put up his name — is required to make an affidavit
of the debt due to him, sworn to before any Judge &c
setting forth in what manner it accrued, & the particular
amount thereof &c ——

now ~~I~~ we hold that Mr Jones has brought
his case within this intention of the law — for he
has, in instituting his action of Webber, made
oath as to the amount of his debt — and

how

how and when it accrued, and it is impossible to establish any legal distinction between this debt and any other, or of any rule of evidence necessary to attach liability to the Respondt — in this case different from that required in any other ~~case~~ or that would be requisite to establish the ~~Debt~~ demand of the Debtor himself — Supposing Watkins had borrowed or received money from Jones, would it not be a debt he owed to Jones? and if he received money from other persons on account of Jones, is he not equally indebted to Jones for the amount? — Supposing he had made his promissory note to Jones for the payt. of money — would it not be a debt he owed to Jones? — Now the debt Watkins contracted here is equally certain and equally determined, by the handwriting & signature of Watkins[†], and the evidence in both cases is the same — It is difficult to draw distinctions between cases like these — But we readily admit, that by using the word debt the law intended to make a distinction, but of

[†] as if it had been his promissory Note

a

a very different kind from that here set up, namely, to distinguish it from damages, and claims of that unliquidated kind which required a previous Judgt. agt. the individual liable thereto, before a debt could affect a third person — had Watkins committed an assault & battery on the Jones, or a trespass on his property there is no doubt, but that a previous Judgt would have been required to liquidate the damages before any claim could have been established agt Webber — but this is not a case of damages but a claim for a specific sum of money due to Jones, ~~for so much of~~ by Watkins for monies he received which belonged to Jones, & which in the eye of the law constituted a debt due by Watkins to Jones — and whatever the Lordship of the case may be, I think the appellant has ~~done~~ proved all that the law required, and was entitled to his Judgt ——

Price[&] appt
and
Fraser — Respt

and
Fraser. appt
and
Price — Respt

order made by I. & D. Grant on Price & Co

Messrs Wm Price & Co 18 June 1827.

Gentlemen —

Please account to Mr Hugh Fraser for the proceeds of the two rafts of white pine, namely one lying in Woods Cove, and one at Diamond Harbour, sold to you by us at 3¼ ℔ cubic foot, as measured off, out of which we acknowledge to have received £75. &c.

I. & D. Grant —

accepted.

Wm Price & Co —

This cannot be considered as a note of hand — nor a bill of Exchange — not being for the payt of a specific amount —

Smith. v. Nightingale. 2 Stark. 375 — when Note was for £65 — + all other sums that might be due —

So the order here, is to ~~pay~~ account for all that ~~is~~ was due to I & D. Grant by Price & Co — for the timber sold to them. —

It was not clearly ascertained here what was due — ~~and~~ the term, account, was therefore applicable — and although it may imply an authority to pay — yet until payt ~~is~~ was made, the right of property remained in the Grants — This order can be considered only as subsidiary to the original Contract, & in order to effect its execution

This order cannot be considered as an assignment or delegation by the Grants to Fraser, nor as a Contract between Fraser & Price & Co— from the want of consideration, or value given by Fraser

The general rule is, that it is essential to the validity of a simple contract, (or agreement not under seal in England) that it should be founded on consideration the Consequences of the want of this are, that no action or suit can be maintained upon it— and this principle also holds in regard of Bills of exchange informally made, when declared upon as contracts or agreements — Chitty says— "But in order to entitle bills of Exchange to the "privileges (of being considered as Specialties) they must "be strictly framed according to the law Merchant "and contain all the essential requisites, and "if any of these be wanting the Common law "rule against assignment of chose in action, and "which requires a consideration, will preclude "the holder from recovering" Although the Chose in action ~~can~~ be by our law transferable, yet ~~does it so~~ it must be either for a valuable consideration

3 Com. Law p. 562. 3.

consideration, or as a donation, which must be specified. — here neither is apparent. —

On the 23d day of June 1827 — the monies in the hands of Price & Co — belonged to the Grants and the attachment, then made in their hands by Ryan, had the effect of legally attaching it as their property —

Subsequently to this some arrangements took place between the parties and we find that Price & Co paid over the monies in their hands to Fraser ~~amounting~~ to £415. 19. 3 — and in order to remedy the insufficiency of the order originally given by the Grants in favor of Fraser they make another, dated 17 July 1827, addressed to Messrs Price & Co — in which they say — "Our order to you of the 18th ult. — to account to Mr Hugh Fraser for the proceeds of the timber sold to you, was intended to be an order to you to pay him the same, as we wish it to be understood, having received full value from Mr Fraser for the amount of our timber prior to the date of the order in question" This order is brot into Court by Mr Price on making his

(as explanatory of their intentions as to the first)

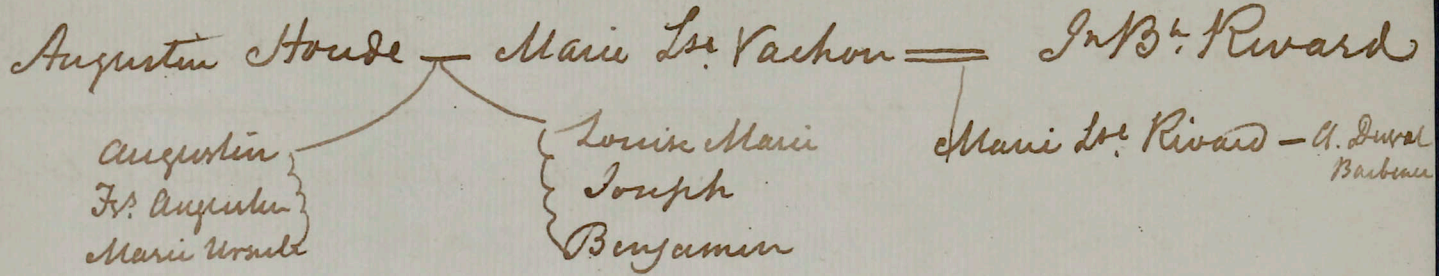
his second declaration as Tiers Saisi in the Cause of Ryan ag^t the Grants; and we think that Fraser would have been entitled† to recover the amount contained in the Statement given in by Mr Price, in consequence of this second order made by the Grants had it not been for the attachment so made by Ryan—

† under the money Counts stated in the declaration

The apprehensions which Penn & Co entertained as to their liability to Ryan induced them to call upon Mr Fraser to pay back to them the amount of the monies attached in their hands £102— which he did through the guarantz given by Mr Fisher, so as to place this sum in the same situation in which it originally stood before payment to Fraser —

Now although Fraser was entitled to his action#, yet under the circumstances, which must have been known to him, it was imprudently exercised, — The appellants had strong and legal grounds for resisting the payment of the money while the attachment made in their hands subsisted, and we think on that account that they were entitled to their Costs in defending the action —

at the time he institutes it agt Messrs Penn & Co



Augustin Houde tant pour lui que comme représentant Marie Ursule Houde — Franç. Augustin Houde — & de Joseph Houde —

&

Jn Bte Rivard & femme — & Antoine Duval de Barbineau & Marie Lse Rivard sa femme —

—

Par acte de Testament du 19 Sep. 1802, Marie Louise Vachon —

Lègue ~~l'usufruit de~~ tous ses biens meubles à son mari Jean Bte Rivard — à l'exception d'un lit garni d'une vache qu'elle donne à Benjamin Houde — et la jouissance des immeubles sa vie durant —

Lègue le fond de ses Immeubles — à Benjamin Houde et à Marie Lse Rivard en égale portion — à la charge de payer à chacun d'Augustin Houde — Fs Aug. Houde, Louis Marie Houde, Jos. Houde, & Ursule Arnoux Villeneuve, enfant d'Ursule Houde décédée &c — pour tout droit dans sa succession. —

Par Donation enclatée du 27 Juin 1815 — Jean Bte Rivard et Marie Le Vachon son épouse, donnent à Antoine Duval et Marie Louise Rivard sa fem. tous leurs biens meubles & Immeubles qu'ils avoient ou qui leur appartiendront lors de leur décés

1° — une lieue de —
2. Terre en le Fief St Antoine

Donné à Augustin, Franc. Aug. Pe. & Joseph 5 Q. chargés pour légitime —

No 222

Jos. Govin
to
Fr. Richer Laflèche

The Pltff as having purchased a certain house from one Jos. Lanouette by deed of sale of 25 July 1817, prosecutes the Defendant as being in possn of the upper part of the building, for the rent and occupation from 25 July 1817 to 25 Augt 1818 — amounts to £12.10 at rate of 10/ ℔ month — and further as Pltff is desirous of occupying the premises himself demands that Defdt be held and adjudged to quit & deliver up that part which he so occupies which Defdt refuses although duly notified & required so to do by notarial protest of the 3d June 1818 — and concluding to the payt of the rent — and that Defdt be adjudged to quit & deliver up the premises — The Defdt pleads a défense au fond en fait by which he denies all the matters of fact stated by Pltff

It appeared by the Protest and sommation made by the Pltff on 25 July 1817, that he required the Defdt to quit in twice 24 hours, after giving "lecture du dit Contrat de Vente, and to pay the rent of his occupation — On the part of the Defdt it appeared that he had rented the premises from the former proprietr Jos. Lanouette from 16 May 1817 to 1 May 1818 by Lease bearing date 16 May 1817 at the rate of 15/ ℔ month. The Cause was fixed for enquête but no witnesses were produced by either party —

The Court held that reading of the Pltff's deed of purchase to Defdt was not sufficient, but that he ought to have left a copy of it w. Defdt — 2. Bourj. Tit. 4. Des Baux à Loyer § 57. p. 61. — Delay given not sufficient — Notice 25 July to quit in 2 days — action instituted 7th Septr — 3 months notice ought have been given. Poth. Louage. 335. 6.

~~But~~ The rule we have to follow here, and which ~~is~~ we find laid down by Chitty in matters of this kind, "that

Chitty. p. 26 — " in the Colonies and plantations, the minor prerogatives
" and interest of the Crown must be regulated and
Gail — " governed by the particular and established law of
" the place where the demand is made" and accordingly
he says "where peculiar laws and process exist, as in
Id. p. 34 — " Guernsey and Jersey, the King himself even in seeking
" to recover his own debts therein, must resort to such
" laws for redress — This ~~principle~~ is also conformable to the Civil
law principles as referred to by Gail & other writers —

Now according to the Common principles of law in this Country, ~~all~~ the rights of the Crown ~~must~~ stand on at least as good a footing as those of the subject & in many instances may claim much higher privileges — and in regard of interest, the maxim is, "Le Fisc s'en

Dic. des Arrets vo Interets — doit tenir au droit Commun pour les interets" and
in applying this maxim to the case before us, the Crown is entitled to claim interest from the day of the demande en Justice — there being no specific demand or count in the declaration ~~on which a higher~~ for any greater interest ~~can be maintained~~ we cannot extend the right further —

The attys. Genl
Bar.—

Du. des Arrets v. Intents

Le Fisc s'en doit tenir au droit Commun pour les Interets—

Chitty on Pow: p. 245—

The General Rule is, that the King may waive his prerogative remedies & adopt such as are assigned to his subjects.—

Id. p. 26—

In the Colonies and plantations the minor prerogatives and interests of the Crown must be regulated and governed by the peculiar and established law of the place—

Id. p. 34.

So where peculiar laws ~~exist~~ and process exist, as in Guernsey & Jersey, the King himself even in suing to recover his own debts therein must resort to such laws for redress.—

The Attᵗ General
Blake. ——

On question, whether the Crown is entitled to recover interest on a debt due by the Defendᵗ husband which was pᵈ. by the Crown to Mᶜ Tavish & Co and as having been guaranteed to Mᶜ Tavish & Co. by the Crown in case the late Mʳ Mᶜ Callum failed in paying same, under a Deed of Lease made by the Crown of the Kings Posts to Mʳ. Mᶜ Callum

There was no Count, or specific demand in the declaration claiming interest – This claim therefore must depend upon what the law will allow in such case – either from arising from the nature of the Contract, or from the day of the demand –

It is however first to be settled, what is the Law or rule of decision to be followed in this case, as it brings in question a right claimed by the Crown –

On one hand it is contended that the public Law of England ought to apply, as the only principle which can govern being the public law of the Realm, ~~which~~ in regard of the rights of the Crown – That the right of the Crown to demand interest or costs ~~in such cases~~ is limited to such cases as are specially provided for by Law, and not as generally allowed as in cases between Subject & Subject – That by the Law of England interest is due only on all liquidated sums of money, but in this case the debt was not certain nor liquidated, and no interest could accrue or run thereon until the real amount of the debt was fixed and ascertained, as

they

has been done by the Judgment of the Court — That this debt here is sui generis, not stipulated nor ascertained by any bond or Specialty such as contemplated by the Stat. Hen: 8 on which interest is allowed — and no right being shewn under which the Crown can claim interest, under this same the Judgt. as given must necessarily stand. —

+ ~~arising~~ founded on a ~~private~~ particular Contract, made by the Servants of the Crown with the ~~Deft.~~ late Mr McCallum, ~~for services~~ ~~of which~~ part of the consideration was to ~~[struck]~~ pay the particular debt in question to those persons.

+ the Crown

We consider the principle however to be that where neither the ~~seat or~~ prerogative or higher rights of the Crown come in question recourse is not to be had to the public law of England, but as this is a minor right of the Crown + it must be governed by the laws of the Country where the right accrues ~~is demanded~~ — That there might be a harshness and severity in applying the prerogative remedy ~~right~~ in matters of this kind, which in all its circumstances partakes more of the nature of a private transaction than a debt growing due to the Crown out of any of its public revenues — That were it even a Case where the higher right of claim might be exercised, yet it was always competent to the Crown to renounce this higher claim and to limit it to that given to the Subject, and in such case it must be consistent with law & reason, that if the Crown ~~may~~ will claim as a Subject, it ought to obtain the same Justice with the Subject, unless there be direct provision to the Contrary — on this principle the Crown ~~might with same reason claim the allowance of~~ would be entitled to interest on the debt in question —

Chitty on Prerog p. 245.

But

it was uniting the whole of the contents & confirming them as the act of the party by his Seal & Signature.

and by means of the seal was in some measure to be considered as uniting the signature with the writing so sealed by it.

The King
vs
Caldwell &
&
Mitchelson et al
Appts

Poth. des Don: Test.
Ch. 1. art. 2. §. 2.
p. 299.

La signature doit être à la fin de l'acte parcequ'elle en est le complement et la perfection. —

C'est pourquoi si le Testateur avoit, apres sa au bas de sa signature, ecrit de sa main quelque disposition qu'il n'eut pas signée, cette disposition non signée seroit nulle — ou Duparc Poullain. 1 tom. p. 85.

Our law does not require the holograph will to be dated — nor do we find any law requiring the date of day, month or year before the Ordonance of 1735 — which forms no part of the law of this Country —

5 Tullier — 330. —

And an arret of 26 June 1678. held such Will good, in the date of which the month was omitted.
Ricard, part 1. Nº 1555. —
1 Journ: Aud: p. 909. col. (a). —

As to omissions of dates — see —
Repe vº Testament. sec. 2. §. 1. art. 6. Nº 6. —
Denis — co: verb: Nº 33. —
Gaz: des Trib. tom. 14. p. 20 —
Furgole ch. 5. sec. 4. Nº 18. —
Quest: de Droit. vº Testament — §. 16 —

5. Toullier - Des Disp. Testamres Ch. 5. No 375. - p. 349. ——

La place de la signature n'est point variable est indifferente comme celle de la date — Cette place est marquée par la nature des choses — elle est la marque de l'accomplissement de la volonté du Testateur et de la dernière approbation qu'il donne à l'acte. — Il est donc necessaire que toutes les dispositions du Testament soient terminées par la signature. —

Merlin. Repre vo Signature. p. ~~443~~ 63.4 art. 5
Ricard p. 1. No 1532 citing ~~[illegible]~~ by [illegible]
arret du 11 Avril 1649. Journ: Audce

——

The case cited from. Deniz. Vo Testament No 35. of the Testament of the vve Voilain, must be considered as complying with the requisites of signature — it was marked in 2 different places first on the 4th page of the Sheet of letter paper and lastly as the final confirmation by the sealing of the paper and again attaching his signature — which instead of being considered as the commencement of the will, must be considered what in fact it was, the last act done thereon, & by the formality of it shewing a confirmation of the Contents of the paper so sealed & secured,

and

The question here is, whether the Crown is entitled to recover interest, & from what period, on a debt which it had guaranteed to McTavish, [illegible], and which it afterwards paid on the default of the late Mr. Goudie who had become bound to pay the same under a Deed of Lease of the Kings Posts made to him by the Crown —

Some discussion has been raised in regard of the law that ought to govern the Case, as it brings in question a right claimed by the Crown — It has been contended, that the public law of England is the only rule we can adopt, and the only principle by which the right of the Crown can be maintained, and that according to this Law the Crown is not in this case entitled to the interest claimed — inasmuch as the right of the Crown to demand interest or Costs is limited to such Cases as are specially provided for by Law, but not in every case where it is allowed between Subject & Subject — but in the present case the debt here is uncertain and unliquidated and by the law of England no interest could accrue thereon — That the debt here is sui generis, not due by a public accountant nor stipulated by any obligation or Specialty such as contemplated by the Stat. of 33° Hen. 8. on which interest is allowed — and no law being shewn by which the Crown can claim interest, the Judgt. appealed from must be maintained. —

We take the principle to be, that in all cases where the greater rights and prerogatives of the Crown come in question, recourse must be had to the public Law of the Empire, as that alone by which such rights & prerogatives can be determined, but this is a minor right, growing out of a particular Contract made by the Servants of the Crown with the late Mr. McCallum, in consideration whereof he undertakes to pay the debt in question. — There might be a harshness in pursuing the prerogative remedies of the Crown in a matter of this kind, which in all its circumstances partakes more of the nature of a private transaction, than a debt growing due to the Crown out of any of its public Revenues — That even there it was competent to the Crown to renounce its stronger recourse, and to limit it to that given to the Subject, in which case it appears consistent with law & reason, that where the Crown claims as a Subject, it ought to obtain the same justice as a Subject, unless there be direct provision to the Contrary — Now according to the above Stat. of the 33 Hen. 8. ch. 39. s. 54 — it is enacted — "That the King in all suits thereafter to be taken in or upon any obligations or Specialties made or thereafter to be made to the King, or any to his use, shall have & recover his just Debt, Costs, & Damages, as other Common persons use to do in Suits and pursuits for their debts" — and if we were to adopt this rule of decision, there would be strong grounds to consider the Contract in question as an obligation coming within the description of that Statute — But the rule we have to follow here, is that laid down by Mr Chitty in matters of this kind — "that in the Colonies and plantations, the minor prerogatives and interests of the Crown must be regulated and governed by the particular and established law of the place where the demand is made" — And accordingly he says, "Where peculiar laws & process exist, as in Guernsey and Jersey, the King himself even in seeking to recover his own debts therein, must resort to such laws for redress" — This is also conformable to the Civil law principle, as referred to by Gail & other writers.

Now according to the principles of law in this Country, the rights of the Crown stand on at least as good a footing as those of the Subject, and in regard of interest claimed as accruing upon a debt, the maxim is — "Le Fisc s'en doit tenir au droit Commun pour les interets" — and applying this maxim to the Case before us, the Crown is entitled to claim interest from the day of the demande en Justice, there being no specific demand or Count in the declaration for any greater interest, we cannot extend the right further. —

1 Hawk. p. 99.

St. 1. Mar. ch. 6. To counterfeit the gold or Silver Coin; not of the Realm, made current by consent of the Crown, or to aid or abet therein, is Highe Treason.—

5 Eliz. ch. 11. Clipping, washing, rounding or filing for lucre or gain, any of the proper monies of this realm, or of any other Realm, made current by proclamation or aiding therein — is declared Highe Treason —

18 Eliz. ch. 1 To impair, diminish, falsify &c any such monies — declared Highe Treason —

Dom^s Rex
Sam^l N. Davis } On P^rs Motion to be liberated from Gaol. —

Dom^s Rex
Andre Gareau } Sept^r. 1824
Defend^t tried for Compound Larceny &
acquitted. —

Josette Bertrand — 2 points in her evidence — of D — falling 3 times — in her husbands arms — done by herself — her head falling on the square part of the perron —

Josette Bizaillon — walked about in D's absence — hair in the talon of Pr's shoe — did not move mind his wife's death then spitting on the ground — that he was the cause of his wife's death but did not explain how —

Hyacinthe Daigneau — father — observed blood through the house — also parcels of hair of D — lying about the floor — + opinion of Pr's guilt —

Angelique Rinville — Neighbour — Pr came for her — his wife dying. — accounts for it — grounds — disobei — tombé — perron — called D. 3 times — wounds & bruises on body — hair taken up by Marianne Robert — — saw hair in different parts of house — D. had quantity fine hair — all pulled out — little & long are torn off her head

asked Pr how his wife came by her death
L. S — I know she is dead by my fault; but
I did her no hurt

Joseph Bizaillon Exd — Smoking his pipe — his indifference

+ 3. Had scolded her more than usual — gone out fell down

Falling bare-headed on perron — the hair might be torn off — but not in such quantities as she obtained

Ursalie Daigneau — woman picked up a cordon de cheveux with sister's hair attached to it. —
Her sister never fell in fits to her knowledge

Margt Boyer — aunt — saw Pr push his wife at door — she fell inside —

Franc. Lanctot — went there before Sun rise — saw D — on bed blood — hair on floor — dat bas de porte —
Pr. Perron — person falls there could not be killed
wounds on body — hair all torn from head —

Bizaillon — & Renaud — ——— Pr smoked his pipe on chair — unaffected —
Pr stated how his wife was killed — he was cause
scolded her — she went out — fell on perron. —

+ — Does not think D — could have received so much injury by falls down Perron —

St Albert Lefevre – Thinks so many wounds could not have been inflicted by falling from perron –
Hair of head arraché –
+ Not possible so much injury could have happened by falling from perron
a coup de feu might do it

André Faille – engagé – saw Pr give his wife des taffes –
& kick her w[ith] his foot last Summer

Jos. Faillé – Pr of he would rather he had been not married
& would give something if his wife were not in existence – This was last Fall –
something about 50 dollars –
+ Pr of he w[ould] give 50 dollars that he were not married

Bazile Laplante – Pr quarrelled often w[ith] his wife –
donné des chiquenaudes –

Dom. Daudelin – Pr threatened his wife – but it was in good humour –

Antè Landot – Cap[t] Melan – held Inquest – Wounds could not have been inflicted by persons falling down perron
Hair scattered about – & on his opinion it had been arraché by force –

Hy. Dayman — Rinville

Several W. — 1 - Hair forcibly torn from her head scattered in different places — on the person bas de porte — on floor —

Fr. Lanctot — Jo. alb. Lefevre — Capt. Lanctot — Jn. Bte. Lefevre — Jn. Bte. Laplante 2 Person falling down this person, could not injure themselves in the way the Pr was — not so many wounds & bruises —

André Faille — Jos. Faille — Dom. Dandelin. 3 - Some kind of harshness & ill usage of the D —

Jos. elle Bertrand 4 Prs. only person who could have done the injury —

André {Josh. Bertrand} — Pushed her down in house — Laid his hand on her hair —

Josh. Bizaillon — hair found in talon of Prs. shoe.

5 Indifference & unfeeling conduct of Pr in regard of his wife's death —

{Jos. elle Bizaillon — ang: Rinville — Franc. Lanctot.} — smoking his pipe. — sitting on chair

Baby
&
Leclerc

action by a Co-seigneur for 1/16
in the Estate, for his Droits honorifiques
in the church, being the only dep^t in
the parish —

Recueil de Jur. Can. par Lacombe. V^o Droits Honorifiques. - Sec. 1^re

Les droits de Justice sont communiqués alternativement à tous les Co-propriétaires par indivis de la Haute Justice, en commençant par l'aîné ou son descendant, quoiqu'il ait la moindre portion — arrêt du 1^er Avril 1631. — Bardet. Tom. 1. liv. 4. ch. 19. — ou l'acquereur de l'aîné. —

L'arrêt postérieur du 21 Avril 1679, rapporté au Journal des Audiences. Tom. 4. liv. 2. ch. 9 juge la même chose entre différens Co-Seigneurs; Que la Justice sera exercée alternativement dans le chef lieu et non ailleurs — que celui qui a la portion de l'aîné sera nommé le premier en tous actes, Sentences & Jugemens — Que les droits utiles et profitables de la Justice seront partagés à proportion des portions — Que le patronage & nomination aux Cures — appartiendront à celui qui se trouvera lors des vacances, en exercice de la juris dictions

ou

ou droit d'icelle — Que les droits honor=
ifiques appartiendront à chacun par
semaines et dimanches, selon sa portion:
Que les officiers des parties comme repres=
entant leurs maitres jouiront des dits
droits honorifiques en leur absence — mais
que l'un des dits Seigneurs se trouvant
présent, quand même ce ne seroit pas dans
le tems de la jouissance, les officiers de
l'absent ne pourront rien prétendre aux
dits honeurs — Que les Curés de la dite
Justice recommanderont aux prieres —
publiques premierement celui qui a
la portion de l'aîné, et les autres apres.
=

Loix Ecc. de la France. par De Hericourt
Lettre G.X. Som 1. N. 8.

En cas qu'il y ait plusieurs Seigneurs
Haut-Justiciers dans une meme paroisse
il faut donner le premier rang dans les
droits honorifiques à celui dans la Justice
du quel l'Eglise est batie — Celui qui a
la Justice sur les places publiques, doit
aussi être préféré, à celui qui ne la fait

exercer

exercer que sur les maisons, ou sur les heritages des particuliers. On accorde aussi la préférence, quand tout est d'ailleurs egal, au Seigneur dont la jurisdiction s'etend sur une plus grande etendue. Si la terre a été divisée en concurrence de droit, il faut préférer celui qui a la portion de l'aîné de la famille, ou, dans quelques circonstances, le plus qualifié. On a quelquefois divisé les droits honorifiques suivant la division de la terre, de maniere que celui qui avoit deux tiers de la Haute Justice avoit le premier les honneurs deux dimanches consecutifs, et que celui qui n'avoit qu'un tiers jouissoit le premier le troisieme dimanche, des droits honorifiques de l'Eglise — Le defaut de regle constante sur ce sujet peut donner lieu à des grandes contestations

—

Dic. de Droit Can.q. par Durand de Maillane. — v.o Banc dans les Eglises.

S'il y a plusieurs Co-Seigneurs Haut-Justiciers — Guyot, en son traité de matieres feodales

feodales, pretend que quoique le chœur puisse contenir plusieurs bancs des Hauts Justiciers, on ne doit y en placer qu'un seul, ou au plus deux, quand il n'y a point de patron. — L'usage de Provence est, que quand le chœur ne peut contenir qu'un seul des bancs des Coseigneurs, le possesseur de la plus grande portion de l'aîné, y place le sien, et les autres sont dans le nef — quand il y a de la place dans le chœur pour tous les bancs, ils doivent être suivant marechal à la queue l'un de l'autre —

—

Henrion. loc. cit. — N°. 20 —

Le Patron et les Seign. H. Justiciers peuvent se pourvoir par la voie de la complainte, quand ils sont troublés dans la possession, ou quasi-possession des droits honorifiques qui leur sont attribués par l'usage — parceque

ce

ce sont des prérogatives attachés à leur qualité — Mais les autres, qui n'ont de distinction que par une espece de bienséance, ne doivent point agir contre le Curé, mais contre ceux qui pretendent avoir les honneurs à leur prejudice —

The law arising upon such fact cannot well be doubted or denied — it might be sufficient to cite merely the 317th art. of the Custom, as decisive — in detailing however under this article what are actes D'heritier — it is held

{ see cases in note book —

The Defendants therefore ~~being~~ by their acts having assumed the responsibility of heirs the next thing is to enquire how far they are become bound to execute the will of the deceased —

Ferriere — Furgole — & Domat — Ricard

The authorities here are as precise & decided on this point as on the other —

Domat.
p. 347. — Ed 4to

L'Engagement de l'heritier est universel —

1st Inregard of the matters of fact —
It is in proof —

1. The Defendants were the heirs at law of the late Mr Foster, and entitled to claim his succession as such —

2. That Mr Foster ~~by his will~~ who was in the poss.n of the property of the community which subsisted between him & his first wife, the mother of the Defendts, consolidated both successions by his will made one disposition of the whole, as if the whole had been his own — but under certain restrictions, & limitations, as to division & management —

3. The will having been acknowledged upon the notary by the Defendts officially, caused as to its entire execution & the sums of the Defendts were opposed —

4 — A transaction or agreement was made between the Defendts as to the mode & manner of dividing the successions of the deceased & how far ~~they would~~ ~~carry~~ the will of the Testator ~~was~~ should be carried into effect —

5. On this the Defendts assumed all acts of management, to the exclusion of the Executor —

6. They made & perfected the Inventory

7. They paid Legacies.

8. They leased the real Estates

9. They sold the whole moveable property — and as heirs of the Testator, their intervention was complete in all the property left by him —

Notes and Authorities on the question of Right of Banality.—

District de Quebec } Banc du Roi — Terme Superieur

Jacques Nicolas Perrault, Ecuier, Seigneur du Fief de la Riviere Ouelle, et proprietaire du Moulin Banal d'icelui, paroisse Notre Dame de Liesse, y demeurt. — Demandr

vr

Jean Bte Guy, habitant, demeurant en ladite paroisse, bannier du dit moulin. — Defendr

Aux Hon. Juges &c

Supplie humblement le Demandr & represente a vos Honneurs, que d'apres les loix en force en ce Païs notamment par l'arret du Conseil d'Etât du Roi Très Chretien en date du 4 Juin 1686, lequel est duement enregistré, il est proprietaire et en possession du droit de banalité dans toute l'etenduë du Fief de la Riviere Ouelle, ayant lui & ses auteurs au desir du dit arret fait construire depuis nombre d'années sur ladte Riviere un moulin tournant par l'eau, lequel a toujours été, et est actuellement dans un etât convenable et propre à moudre du bled et autres grains pour la consommation de tous les Habitans Sujets à ladite bannalité. — Que la Construction du dit moulin a coûté des Sommes considerables au Demandeur et à ses auteurs, et que son entretien et ses reparations jointes aux obstacles à surmonter d'une place unique & difficile lui causent annuellement

annullement des frais dispendieux. —

Que nonobstant que le Defend^r qui reside dans l'etendue de ladite banalité connoisse bien l'arrest qui l'assujetit à venir moudre ses dits grains de Consommation au Moulin banal du dit fief, il s'obstine depuis le mois de Decembre de l'année 1800 jusqu'à ce Jour à s'abstenir du dit Moulin banal et refuse d'y porter moudre ses grains de consommation pour les porter faire moudre ailleurs sans le Congé du Demandeur, ce qui lui a Causé un dommage notable par la soustraction du droit de mouture sur ladite Consommation durant trois années. —

Ce considéré, le Demand^r conclud à ce que le Defend^r soit assigné d^e pour se voir condamner à payer en nature au Demand^r 23 minots de bled froment pour la restitution du droit de mouture ainsi soustrait, les dits 23 minots formant la 14^e partie de la consommation du Defend^r et celle de sa famille, composée de neuf personnes durant les dites trois années, à raison de douze minots de Consommation annuelle pour chaque personne — si mieux n'aime le Defendeur convenir d'Experts qui seront nommés par les parties, si non, d'office, à l'effet d'estimer les dites trois années de consommation de la famille du Defendeur en bled et l'evaluation en argent eu egard au prix courant d'icelui durant les dites trois années, et ensuite se voir condamner à payer au Demand^r la quatorzieme partie du montant de lad^e evaluation avec l'interet legal sur icelui à compter du Jour de la signification de la presente requête au Defendeur jusqu'au parfait paiement — et pour voir dire et ordonner en outre qu'il sera tenu de faire moudre à l'avenir au moulin banal du dit Fief les grains de sa Consommation en bled et ceux de sa famille, et que defenses lui seront faites de les porter faire moudre ailleurs qu'au dit

Moulin

moulin, le tout avec depens et sans prejudice à l'amende de soixante Sols parisis, egale à trois chelins et sept deniers et demi courant que le Defendr a encourû de droit envers le Demandr, laquelle doit être prononcée contre lui pour s'être ainsi soustrait sans cause à ladite banalité —

Plea — general denegation & pluffs right —

Jeudi le 20 Juin 1805.

La Cour, parties ouies, par leurs avocats, vu leurs pieces et productions respectives, apres mûre delibration est d'opinion, que le Defendeur est sujet à la banalité du moulin du Demandeur dans le Fief de la Riviere Ouelle, en consequence adjuge que ledit Defendeur aille dorenavant faire moudre le bled de Consommation de lui et de sa famille audit moulin, et quant aux arrerages demandés par la présente action — ordonne avant faire droit que le Defendeur comparoisse en Cour le premier Jour du Terme d'Octobre prochain, pour prêter le serment Judiciaire, afin de constater sur sa declaration la quotité de bled consommé par lui et sa famille pendant les trois années anterieures au commencement de la présente action — Depens reservés, et soit signifié. —

See also a Judgt rendered at Quebec

Between — { La Veuve Couillard faisant pr son fils.
& Michel Blais. — Defrs

6e Septbre 1774.

La Cour ou — et apres en avoir delibéré et tout considéré, et attendu que le moulin du Defendeur a été construit au prejudice des moulins bannaux de la Seigneurie de la Riviere du Sud, et malgré — l'opposition formelle du principal interessé dans le — profit de la banalité de ladite Seigneurie — La Cour declare le moulin du dit Michel Blais indument etabli, et en consequence condamne ledit Blais a demolir son dit moulin, et le denaturer de façon qu'il ne puisse servir a moudre du grain ni à faire de farine, en descendant les vargues, en demontant les moulanges et mouvements et ce sous cinq Jours — reservant à la Demanderesse au nom qu'elle agit toute action qu'elle voudrait — intenter contre ledit Blais pour raison du dédommagement qu'elle pretend lui etre dû par ledit Blais pour les — mouture dont lesusdit moulin lui a fait tort — et en outre condamne dit Blais en tous les depens du Procès.

—

Jugements rendus par la Cour d'appel, la Cour du Banc du Roi, et celle des Plaidoyers Communs, sur les droits de bannalité de moulin. —

—

1re Espece — Pour droit de moulin soustrait. —

En 1769, Mad.e Ve. Couillard, et ses Coheritiers Seigneurs de la Riv. du Sud, et proprietaires des deux moulins bannaux existant dans l'enclave de leur Seigneurie, assignerent Michel Blais Cosignieur de ladite Seigneurie, et dix autres habitans Sujets des dits moulins, à comparoitre devant la Cour des Plaidoyers Communs du District de Quebec pour s'y voir condamner à payer à la Demanderesse les droits de mouture qu'ils avoient soustraits aux moulins susdits avec l'amende &c — Il y eut un incident. — Les Defendeurs pretendirent que le droit de bannalité avoit été divisé dans la famille en 1736 — qu'ils etoient domiciliés dans la division assignée à Jacques Després, heritier d'un quart de la Seigneurie, dont le moulin n'existoit plus, et que c'etoit à ce dernier, ou à ses representans, à les poursuivre, s'ils en avoient le droit. — La Demanderesse repliqua et prouva que la division n'avoit été que des profits de moulin, et non du droit de bannalité, qui avoit été reservé aux trois moulins susdits, avec la liberté aux Sujets de la Seigneurie d'aller moudre à celui des trois qui leur plairoit, que si celui bâti sur la terre de Jacques Després en vertu de la transaction de 1736 n'existoit plus, les deux autres subsistoient. —

La Cour, n'ayant aucun egard a cette chicane condamna les Defendeurs par Jugement du

14 —

14 Aout 1770, à payer à la demanderesse ès-dits noms les mouture des grains d'une année de la Consommation de leur famille, sur leur affirmation avec dépens. a

Les Défendeurs livrent un writ d'erreur contre le Jugement susdit, rapportable à la Cour Suprême d'alors, au Terme de St Hilaire dans la 13e année du Regne de Sa majesté. — La Cour après avoir entendu les Defendrs plaidans par l'organe d'Henry Kneller, leur avocat, alors avocat du Roi, confirma, le 12 Fevrier 1773, la Sentence de la Cour des Plaidoyers Communs et accorda de plus à la Demanderesse des dommages pour l'indemniser du delai, et des frais, que cet appel lui avoit occasionné. —

2de Espece — Droit universel de banalité, & demolition d'un moulin. a

En 1771, Michel Blais Coseigneur de la Riv. du Sud, s'avisa de bâtir un moulin à farine tournant par le vent sur sa terre dans l'Enclave de ladte Riv. du Sud. — La Dame Vve Couillard Tutrice de son fils mineur, fit ses oppositions — Elle assigna ensuite ledit Blais à comparoitre le 13 Juillet 1773 devant la Cour des Plaidoyers Communs

Jugemt - de Giles Hocquart du 18 Fevr. 1731. -

Qui ordonne au Sr Dauteuil de faire incessamment la reparation de son moulin - Sur plainte de ses Habitans et qu'a faute, permet aux dits Habitans d'en construire un à leurs frais, aux Conditions marquées par l'arrt du Conseil d'Etat du Roi du 4 Juin 1686 -

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Jugt. du meme du 10 Mars. 1734. -

Sur plainte des Habitans de Pontilly, que la Dame Veuve Poissan n'a aucun moulin de bâti dans la Seigneurie, lui enjoint d'en faire batir un, faute de quoi elle sera decheüe de son droit de bannalité. Nous du consentement du Sr Rivard fais ant pour les Habitans y avons accordé à ladte Dame Vve Poissan le terme et delai de deux ans à compter du Jour de la notification de la presente Ordce pour par ladte Veuve se mettre en etat de faire construire, le moulin banal passé lequel tems, il sera par nous ordonné ce qu'il appartiendra. -

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Jugt. du meme. du 11 Juillet 1742. -

Qui sur la plainte de Simon Jolie, meunier du moulin d'Argentenay, c. Jacques Asselin, habitant du dit lieu, contenant que lui & plusieurs habitans ~~representant~~ refusent depuis plusieurs années de porter moudre leur bled au dit moulin - Qu'une pareille conduite est d'autant plus reprehensible qu'ils sont tenus

suivant

suivant les reglemens de Police, et en dernier lieu conformement à un arret du Conseil d'Etat du Roi intervenu au sujet des moulins bannaux – et conclud à faire approcher ledit Asselin. — Ouïes les parties comparantes, ordonnons que tous les Habit.s dudit lieu d'Argenteuay soient tenus de faire moudre leurs grains au dit Moulin – Enjoignons audit Jolie, Meunier, de tenir toujours son Moulin en etat, et de se conformer au surplus aux reglements intervenus sur le fait des Moulins bannaux, sous les peines portées par lesdits reglements — Condamnons ledit Asselin a payer au dit Meunier cinq menots pour le tems qu'il a manqué a faire moudre son bled, en argent sur le pied de 3.s le menot

Communs du district de Quebec, pour voir ordonner la demolition du dit moulin à ses frais, et se voir condamner aux depens, se reservant la Suppte à se pourvoir pour les dommages apres Juzt definitif.— L'incident dont il a été parlé dans la 1ere espece fut encore plaidé.— Le Defendeur disoit qu'il avoit bati dans la division assignée à Jacques Després par certaine transaction de famille en 1736, que le moulin avéré banal de ce dernier, n'existant plus, il avoit eu droit comme acquereur d'une partie des heritages de ce Després d'en bâtir un — Qu'au surplus Jac. Després ou ses representans, ne s'en plaignant pas, Mde. Couillard n'avoit aucun droit de s'en plaindre.— Mde: Couillard repondoit, que par cette transaction, Jacques Després avoit eu permission de bâtir sur son domaine propre un moulin à vent— que ce moulin etoit banal pour toute la Seigneurie ainsi que les deux — moulins à eaux: Que les tenanciers de Després n'etoient pas plus tenus à la bannalité de son moulin qu'à celle des deux autres appartenans aux Couillards — Que le droit de bannalité — n'avoit pas été divisé comme les profits, et — que chacun de ceux qui le possedoit indivis, etoit legalement autorisé à s'opposer à tout ce qui pourroit prejudicier au droit exclusif et prohibitif de bâtir moulin sans la permission

de

de tous — Que si le moulin à Vent de Jacques Déspréz etoit ruiné, qu'il n'y avoit que les — representans de Despres qui avoient le droit de le re-bâtir — Qu'il n'etoit pas du nombre ni aux droits d'aucun de ces Representans &c Enfin la Cour par Son Jugt. du 6 Septbre 1774, condamna Michel Blais à demolir son moulin, adjugea les dépens, et assura à la demanderesse l'action en dommages pour les moutures dont ce moulin l'avoit privé. —

Le Defendr appella de ce Jugt., qui fut confirmé en Cour d'appel le 23 Decembre 1774 apres une très longue, très animée, et très — Savante procédure tant d'un coté que de l'autre. —

Les avocats & Conseil de la Dame Vve Couillard quant au droit prohibitif & exclusif, citoient Duplessis liv. 8. ch. 2. — Ferrière sur l'art. 71. Glose 1re — Le President Le Camus — Bacquet ch. 29 — Brodeau Sur Loüet, lettre M. Chopin sur la Coutume de Paris, qui cite des arrets de 1215. — Ils disoient — la banalité n'a eté reputée odieuse en France qu'autant qu'on la regardoit comme une usurpation sur la liberté des Habitans, dans des tems malheureux de troubles & de guerres — mais il n'est pas de Coutume qui empêche les — Seigneurs d'acquerir ce droit par Convention

ou

ou par la loi du Prince Legislateur. — Ils
representoient que l'arrêt du Conseil d'Etat du
Roi du 4 Juin 1686 avoit attribué ce droit, à la
demande même des habitans du Pais, a tous les
Seigneurs du Canada qui par la suite bâtiroient
des moulins dans leur Seigneurie, lesquels seroient
bannaux, c'est-à dire, auroient la Contrainte sur
tous les habitans de la Seigneurie. — Les Seigrs
du Canada ont bâti ces moulins au desir de
l'arrêt pour la Subsistence des Habitans et —
l'avantage de la Colonie (deux Causes justes) et dans
un tems ou ces moulins ne pouvoient que leur être
à charge — à présent qu'ils commencent à leur donner
quelque profit, y auroit-il de l'equité à les en priver?
Seroit-il juste de regarder comme odieux un droit
établi par l'autorité Legislative même, un droit
de propriété garanti par le Gouvernemt Actuel?
Ils conferoient l'arrêt de 1686, fesant le titre constitutif
de la banalité en ce Païs, par les justes Causes de
Subsistence et d'entretien, et par l'obligation de
bâtir, avec les Savantes Observations de Mr Le Camus
sur l'art. 71 — ou ce Grand Jurisconsulte dit, "Une maniere
d'acquerir un droit de banalité seroit encore, quand
la Commodité des Habitans se trouveroient d'un coté
et la depense du Seigneur de l'autre. —

Il ne faut pas oublier de joindre à ces
Jugemens ceux qui nous sont connus, et ceux
qui auront été decouverts dans les anciens Registres

de

de la Prevôté, et ailleurs — Ceux surtout du Conseil Superieur —

6 Aout 1706 — arret portant defenses à la Dame De la Forest de faire tourner le moulin qu'elle a bâti dans l'Isle d'Orleans. —

2 vol. Edits. p. 176.

20 Decr 1706. Arret entre le Seigr. du Sauzon, et le nommé Charest, qui ordonne que moulin de ce dernier sera fermé — et comme cet arret est fondé sur celui du Conseil — d'Etat du 1686, qui n'avoit pas encore été publié, le Conseil Superieur termine Son Juge contre Charest en ordonnant la publication d'icelui, qui en effet ne pouvoit avoir d'execution, qu'un an apres cette publication. —

then the Pr. was up & a Mr Stewart who was in same room with Wms—, recollects he

x

Recollects hav3. heard something said to Pr. about eggs that morng—

James Stewart, boarded in July last at house of Mr Jones on even3 of 14 July went to bed about 11 Oclock — thinks the Pr. was then up. had seen him about hf an hour before — does not know that the house was then shut up —

x.

Heard some dispute between Pr & Mr Jones respects some eggs heard Pr. say he wd. not put up wt. such treatment would go away —

John Donnelly lives at Ste annes bout de l'Isle — is employed about ferry then — saw Pr. in July last at that ferry the Pr. knocked at the door wt. a rifle, 9r. Wm observed when he got up — he was on horseback, was ferried across the river to Isle Perrot — the Pr. had a large white bundle in his hand

Defence.

Luke Stevens. Soldr. in 88th. Regt. good chr — to Pr

John OBrien Soldr. in 88th formerly now in Nov. Sc. Regt. Good chr —

Verdict Not Guilty of burglary — but guilty of Petty Larceny —

The King
vs
Jn Marie Brunelle
& Jn Bte Robillard

On Indictment for horse stealing —

Joseph Roi, lives at Lachine — his horse was put into the field of the neighr. and on 10e. June last was stolen — horse grey — saw horse in the field the preced. wr. — about 8 or 9 o'Clk next morn. obs. his horse was gone — does not know Prs — Kd Paul Ducet since time the horse was found, — on inform. he rec. he went to the River des prairies and found his horse in pos. of Ducet — values his horse at £41.13.4. —

X.

Does not think that his horse could have escaped by the barrier, as he was hoppled, and when he missed him, he found the barrier shut —

Louis Leclaire, lives in same house wt. last Wn. kd. his horse is of a grey colour & a stone horse — The horse was miss'd the 11e. June in the morng. — he was afterwds. found at the River des Pr. at one Ducet's —

X

That the brothers of Roi sometimes make use of the horse but very seldom —

Paul Ducet. lives at Riv. des Prairies, he kd Pr & bought a horse

horse from them on the 11th June last at Rev. des P— about 8 or 9 o'Clk in the morn.s. they passed in the road w.t horse— when W.m proposed to buy him— Robillard said it was his & asked 75 dll.s the W.m offered 60 for him— after some time they agreed to it— he took them to his father's house & p.d them the money— ~~Brunelle~~ Robillard called himself Tous.t Charles. and Brunelle called himself Jos. Lavendure.— The horse was an uncut horse of a grey colour w.t four white feet, grey mane & white spot on his nose— The horse was afterwards claimed by Roi & Leclerc —| Here the W.n by desire of Att.y Gen.l went to look at horse & ret.d | says, same horse & he has seen now in poss.n of Roi— That it was Robillard who sold the horse, & it was to him the W.n p.d the money—

That when he first saw P.rs Brunelle was on the horse and Robillard foll.d on foot.—

Jn. Marie Mondelet— Just. Peace— the P.rs were brot. before him on a charge of stealing a horse, he took their exam.n & he signed Robillard— & was read, cont.g the confession of the P.rs— Says, that the P.rs was brot. before him on a warrant from the Police office signed by him or Mr McCord, he does not know which, and upon this he took the exam.n of the P.rs — Here it was objected that the

the Magistrate had no cognizance over the offence unless it appear that he issued the warrt to bring the Pr before him — The P. was brot before him from the Gaol, & he does not know what kind of influence might have been used with him before he was brot before him —

Defence.

For Brunelle — Jos. Boucher — Kl. Pr since his infancy — always passed for a man of weak intellect in the parish & generally called Jos à Brunelle, he may be easily imposed on by anybody —

For Robillard — Jn Bte Boyer. Kl. Robillard since his infancy always considered him as an honest man — and belongs to an honest & respectable family —

Franc. Chaulet. same evidence —

Objection raised to admissibility of Robillard's confession taken before Mondelet

Verdict. finds Jn. Marie Brunelle Not Guilty
find Jn Bte. Robillard
Guilty —

The King
vs
John Quin

On trial of Indictment for horse Stealing

William Jones. keeps a tavern in Pt. Cart. Sub— the Pr. hired as a Serv.t w.t W— in June last & was in his house about 3 weeks & 3 days— The W. at that time had a ~~grey~~ bright bay mare, blk mane & tail, head white upon her two hind feet one of the hind legs white nearly up to the tail, a good deal of white in the face— had a bridle & saddle worth £5— the Pr. went off from the house of W— on the night between the 14 & 15 July last without the knowledge & permission of W— the mare, bridle & saddle were stolen the same night— had no other man Serv.t at time & Pr. had charge of mare— about 4 o'Clock next morn.g found out the theft— on information he went to the end of Island where he was told by one Mr. Donnelly that a man such as W. described had crossed the ferry with a horse—& a rifle gun— went on to Cornwall in Upp. Canada— & found his mare bridle & saddle at one Wagoner's there— thinks it was in consequence of what Pr. told him that he found the bridle & saddle, but he knew from other information that the mare was at Wagoner's—

x.d—

That his Yard gate was shut in the afternoon about

5 p.o

six O'Clock — the Stable door was generally left open. The day preceding the theft there was some difficulty between him & Pr — about some oats when P. told Wm he would leave his Service —

John Donnelly, lives at Ferry at Ste Anne's bout de l'Isle saw Pr in July last at the Ferry house — he came there in the morning a little after sun-rise, and asked to be ferried over the river — the Pr had a horse or mare with a large white bundle & a rifle the mare was of a dark red colour with white in her forehead — That Jones came there about a week after, and enq. if a man wt a mare giving a description of them had passed there — the Wr gave what information he knew — Saw Jones on his return wt Pr — some days after, and knew the Pr to be same man who had passed there some time before

X

Did not take particular notice of the man so as to give an exact description of her — it was only from the description given of the Pr & mare that Mr Jones that the W. recollected having ferried

him

him over the river —

Robert Tesseyman. Innkeeper in Montreal, sold a bay mare to Wm Jones have a white mark in her face with white mind feet on 18 June last — She had a blk mare & trail —

Moncriff Blair — lodged at house of Wm Jones in July last, & remembers that one Mond. Jones came into his room & told him that had been robbed & that his mare was gone — saw Pr in the house the evening before —

James Stewart, boarded at house of Wm Jones in July last — the Pr was a servant there at the time —

Verdict. Not Guilty —

Thursday 7th Sept 1815 —

The King
Guill. Laberge } On trial of Indictment for Gr. Larceny. ~~horse stealing~~.

Mary Donnohue, wife of Martin D. one of Artillery Drivers — She was at Kingston last fall — made an agreemt wt Pr to bring her to Cornwall for 10/ — She accordg —

came down to Canaraqui in the batteau – It was then dark she landed w^th the other people on board & except the people of the batteau went to a tavern returned afterw^ds to the batteau to get a provision basket she had in it – she saw P^r in the batteau – When she embarked on board the batteau at Kingston a large chest in q^h she had 18 gowns – an iron tea kettle, worth 15/. a frying pan 7/– pair smoothing Irons 7/6 – one linen sheet 10/– six loaves bread 5/– one other iron kettle 10/– a callico gown 20/– 4 child^s call. frocks 10/– 2 boys cotton shirts 10/. white cloth Jacket 10/ – pine chest 5/– between 50 & 60 dollars in Silver – & the other articles ment^d in the Indictment – all which articles were in her trunk when she arrived at Ganaraskoui, except 2 kettles, frying pan, a sheet, yellow gown & waistcoat, and she had the key in her pocket – She wished to have brot the chest up to the tavern & all her effects – the P^r & another man told W^m that he w^d take particular care of the chest, & on this the W^m left the chest in the batteau – The W^m slept at the tavern, got up about 3 o'Clock in the morn^g. went down to the water side when she had left the batteau – but it was gone with all her things, & she was left with her children – She afterwards saw P^r in Montreal, she went up him & asked him if he did not belong to Mr Gardner's

batteau

Dominus Rex.
vs.
Jocelyn Waller.
Judger Duvernay

On Indictment for a Libel. —

Words charged in the 1st Count of the Indictment. —

The Official Gazette talks of the Speaker, being the organ of Conciliation — with whom? — not between two parties in the Commons, over which he presided, — There unanimity prevailed — for two or three voices from the Officers of Government, did not disturb the unanimity that prevailed in the Commons — Is it conciliation with His Excellency? — ~~That~~ What conciliation could be hoped for with an administration, which for seven years had been violating the laws, violating the Constitutional rights of the Country — which had transacted with the ministry in England to declare against us, which had vowed interminable war with our rights — which had dishonoured & defamed the Lieutenant Governor, who had won the affections of the Country, — had treated it kindly & established harmony — which had refused communication of necessary documents upon important Subjects — which had defamed, insulted, and injured the representative body — which had sanctioned in its official papers the filthiest abuse against all — individuals prized by their Countrymen for their abilities, activity and patriotism? — What hope of Conciliation remains with such an administration which avows that it will not change — revives — military ordinances against the plainest rules of ~~Prohibition~~ legal

legal construction, and employs the power with which it vests itself to punish British Subjects for the exercise of Civil rights — coercing the free expression of political opinion — which travels about, thanking any half dozen of remote, ignorant, fawning or designing individuals for addresses, which load it with flattery and ~~shor~~ utter abusive Calumnies against the representative body chosen by the landholders and free holders of the Province? — Conciliation is impracticable with such an administration — Conciliation with the clerkardry, would be submission on the part of the House, to the loss of its essential rights, to insult and dishonor —

The Country is threatened by the Official Gazette, that if M Papineau is chosen Speaker, the Governor placing himself in opposition to the voice of the whole Country, will refuse his Consent and dissolve the House — We hope the House, will chuse M Papineau, and shew reasons for chusing him, and persist in the choice — That the Governor and his Council will refuse their ratification, we think probable enough — how far that will be valued we cannot say, and we think it is possible they will dissolve the House to the great injury of the Country. Another subject of discord and discontent will thus be raised by the present administration, and the passions of the Executive and of the place-holders will commence another war against the whole Country — There can be little doubt, that such an administration will be considered as a nuisance by the British Government, and that its own follies and misconduct,

will

will, if the Country co-operate with firm and decisive measures, speedily extinguish it. —

In a second Count of the Indictment the latter sentence only is laid as the ground of the libel. —

The innuendos or averments in the Indictment are +

1 That the Defendt intending and contriving to traduce, vilify and bring into hatred and contempt amongst the liege subjects of our Lord the King, the Administration of the Govt. of our Sd Ld. the King in this Province —

2 To cause it to be believed that the people of this Province have been, and are oppressed and injured by the Govermt. of our said Lord the King in this Province —

3 That the laws and constitution of this Province have been, and are violated and set at nought by the said Govermt. —

4 And to defame and vilify the persons appointed & employed by our said Lord the King, for & in the administration of the said Govt in this Province — and especially His Excellt The Right Hon. George, Earl of Dalhousie, Govr in chief of our Sd Lord the King in the Province —

5 And thereby to withdraw the affection and allegiance of the liege subjects of our said Lord the King in this Province from our Sd Ld the King —

Tarif for Witness

To a witness ℔ day 5/—
To a captain of Militia, Justice of Peace &
Merchant 10/ ℔ day — allowing 10 leagues
To notary & surveyor 15/ ℔ day
℔ day for distance of travel —

To a man travelling in his own carriage 6 ℔ league
——— ——— in another mans do — 3. do —
— When the carriage is hired wt a driver 1/3 ℔ do
When — do — without — do — 1/—

Tuesday 29th Sept. 1818.

No 105.

Marie Suz. Voyer
Jesse Pemoyer
Divers oppots

On rule to shew Cause why oppositions should not be dismissed as having been irregularly filed —

Vezina for three Opposants, object to the irregular manner in which the rule has been obtained, it being agt. the Opposants generally to shew Cause and not against any particular opposant —

Rule discharged

No. 216

Robert Stewart
vs
Guy Colclough

No 35

Benj. S. Solomon
Jos. Leblanc
Divers oppts

Hearing on oppositions —

Three oppositions admitted —

Vezina for oppt. Ant. Crevier Billerive as Tutor to his child — afin de charge — for 1/5 of the property and the only question whether oppot. is entitled to 1/5 or to 1/6 of the property in question — Josette Chevrefils Billeish, sister of the Testator is entitled to the usufruit during

during her life time, after her decease the property goes to the children of the two other Sisters — the Oppost. as having married one of the Sisters, now claims 5/6 as Tutor to his Minor — the other Children having made over their rights to the Defendant upon whom the property was vested — When the legacy became due there were five Children — the 6th. having died since the Testament —

Tonnancour for Defend. The Defend. says, that he acquired all the shares in the property but 1/6 — having purchased from the heir of the deceased — to whom she succeeded, as the right became vested from the death of the Testator in each of the children then existing —

Vezina for the Oppos. contends that the time of the death of the testator is not to be considered as the time at which the legacy to the Children is open, it can be considered as open only when the usufruit is determined — this has not yet happened, and the existing heirs are now the persons who can claim —

By Testament, bearing date 9th July 1791, Antoine Chevrefils dit Bellisle, bequeathed to his sister Josette Chevrefils dit Belisle, wife of Jos. Dubord dit Lafontaine, a lot of land &ca during her life time, and to her Children after her decease — and in case she died without issue — then to the Children of his other two Sisters, namely, of Louise Chevrefils dit Belisle, wife of Fredk Gutké, and of Francoise Chevrefils dit Bellisle wife of the ~~Defendant~~ oppost Antoine Crevier Bellerive —

The said Josette Chevrefils dit Belisle, has no Children — but is still alive — and by act of the 4th Janv. 1816, conveyed all her right of usufruit in the lot of land in question to the Defendant. —

The said Louise Chevrefils dit Belisle, had issue by her marriage with the said F. Gutké, two Children, Francoise and Louise. — Louise died a minor — Francoise sold her share, (stated to be 1/6) and also the share of her deceased sister, Louise, as her legal heir, in the said lot of land to the said Defendant. in —

The said Francoise Chevrefils dit Bellisle, had issue by the Opposte four Children — Joseph, Julie, Frederick, and Edward — The three elder Children, being of age sold their rights to the Defendant, in the said lot of land — The younger child Edward is still a minor, and his father as his Tutor now claims 1/5. in the said lot of land —

№ 254

John P. Bostwick
et al' Exrs &c
v
Etienne Renoyzé

Hearing ex parte on the merits —

Vezina. demands Indt — on evidence adduced

—

№ 65

Pre Foretier
Pre Portugais
Pre Portugais Appt

Opposition afin d'annuller —

Final hearing

Sonnancour for Appt. The opposition is null as the legal formalities have not been complied with — The seizure not having been made in the presence of 2 Witnesses. — refers to Ordre of 1667 — Two persons appear to have signed the Procès Verbal of the bailiff, but they cannot be considered as Witnesses to the act, as one of them is a Guardian, & liable as such. —

Vezina for Plff — There is no necessity for the presence or signature of Witnesses at the seizure under the Sheriff's warrant, which is always founded on a Judt. of a Court of Justice, and the proceedings in this respect under the Code Civil have been altered —. Even if this proceeding were in force, the same is regularly observed in the present instance —

No. 203

Christ. Carter.
John [illegible] Antrobus
John [illegible] Antrobus
opp

Op opposition afin de ~~conserver~~ distraire —

Vezina for Oppt — Pluff — The oppos[n] is irregular & cannot be considered as afin de distraire, the demand being but of one indivisible object — the usufruit of a certain house held by Defend[r] during his life time — The Defend[r] as Tutor to his minor children purchased the usufruit in the house for & in the name of his minor children — The Tutor could not do this without special authority, nor could he pray the monies be paid for the same out of the funds of the Minors — such monies must be considered as his own proper monies & paid in fraud of his creditors — That several of the minors are now dead & the oppost. as their heir is entitled to the usufruit they held as the heir of his children so that this share at all events ought to be sold under the present Execution —

Tonnancour for the Oppos[te] — The opposition is regular & cannot be considered but afin de distraire The purchase made by the Defend[r] is legal, and no fraud can be imputed to him in purchasing a right for a house to lodge his children — The Defend[r] does not claim any right as heir of his

deceased

deceased children, n'est heritier qui ne veut — the Oppost. has claimed as Tutor of his surviving Children which shews he does not claim as heir —

Vezinet — in reply — the purchase was made by the Defend. in the name of seven Children the opposition is made only in the name of two so that the other five parts ought to be sold as there is no claim for the other five parts befor the Court —

No 173

Michel Robitaille
Louis Pacours

On final hearing on
cause

Ogden for Pltff submits the Case on the hearing already had — cites no further authorities.

Wednesday 30th Sept. 1818.

No. 105.

M. Suzt. Voyer
vs
Jessé Pennoyer
&
Divers Opposts

On rule obtained by the Pltff. for the Opposants to shew Cause why the Oppositions made and filed in this Cause should not be rejected, as not having been made within the time required by Law

Dozinia for the Opposts The Oppositions were made and filed on the 2d Augt. at an early hour — The Sale was advertised for the 17th of the same month, so that between the hour of making the Oppos. & the time fixed for the Sale there were 15 full days, or 15 times 24 hours which is sufficient — & the Sheriff considered the Oppositions in time, as he in consequence stopped the Sale — and no injury can now arise to the Pltff by proceeding upon the merits of those oppositions which are made upon substantial grounds of right — When the Sheriff receives and returns an opposition to this Court, it no longer remains a question whether it was well

well received or not, but this Court must determine upon the grounds upon which it was made — It is true that the oppositions were filed at the Sheriff's Office on a Sunday, but if there was irregularity in this it was covered by the Sheriff's receiving the oppositions, and besides the service on that day is valid — see Born. Ordr. 1667. Tit. 3. art. 5 — when service of process is allowed to be made on a Sunday or holiday to prevent a prescription of Plff's demand — The Law in this Case must be favorably interpreted in the case of a proprietor seeking to prevent his property from being sold to pay the debt of a stranger

Ogden for Plff in support of the Rule — The oppositions have not been filed 15 days before the day of the Sale as required by Law — see St. 41. Geo. 3. ch. — besides Sunday cannot be computed as one of the days, and if it were, the time is too short — The Sheriff could not legally receive the oppositions — his having done so cannot deprive the Plff of her rights — Nor can this Court maintain oppositions made contrary to Law, although received by the Sheriff —

Three Rivers – January Term 1819

Monday 11th January.

Present

Justices Reid Bowen & Bedard.

№ 203.

Pacquet vs Momeny & al. } On rule to shew Cause why Judgt. rendered in this Cause in 1816 – should not be renewed and execution granted thereon – for the principal and Costs. –

Ogden for Defdt – The bill of Costs has not been taxed, and Judgt. cannot be renewed in that respect, as the sum is uncertain – The Costs ought to have been taxed before the present rule was obtained –

Vezina for Plff. The Judgt. in this case was rendered under the old tarif of Costs and no bill of Costs can now be taxed under it, as it no longer exists – but the Court can grant a quantum meruit in lieu of those Costs – according to the principle of the present tarif. – That Plff has filed a bill of Costs with the Rule made according to the old tarif, which the Court can allow or not as it sees fit. –

No 105.

Marie Suzi Voyer
Jessé Pennoyer
Divers Opposts

On Rule obtd by Plff on opposants to shew cause why the oppositions made and filed in this cause should not be rejected as having been improperly received and returned by the Sheriff

This ~~Rule~~ was heard last Term and re-heard to day under the directions of the Court.—

—

No ~~44~~ 194

Morin
Dumoulin

On Evocation from the Inferior Court.

Vezina for Defendt. Action founded on a lease by pl. Defend. is bound to furnish the article demanded — the rights in future in this respect are bound.—

Tonnancour for Plff. Action is founded on a contract between the parties, by pl. Defd. is bound to furnish the objects in question. This debt is the same as any other — no future rights can come in question.

—

Tuesday 12th January 1819.

No. 326
Le Sieur v. Johnston

The Court gave acte to Defendt. of her notice to Pltff of her intermarriage w. J. Porteous since last proceedings had in the Cause.

No. 260
Osmyn Griffin v. Pre. Bureau

On Defendt. mo. to strike cause from the rôle d'Enquête, as having been irregularly inscribed on it.

Tonnancour for Pltff - The cause was regularly inscribed on Role on the 8th. Jany - for the 12. so that a Juridical day intervened in Term between the notice of fixing and the day fixed - No affidavit to put off the cause -

The Court rejected the motion.

Wednesday 13th January

No. 15th
Schiller v. Dunn

On Defendts. mo. that Pltff be held to declare whether he means to make use of the Sheriff's return as Defendt. means to make an Inscription en faux of same -

Vezina for Pltff - The proceed not conformable to Code Civile, as it ought to have been by requête signed by the party or by his counsel under a special power - art. 6. tit. 9. ord. 1667

Ogden for Defendt. - Requête not necessary - This with the power may be brought in after with the declaration of the party -

No. 260

Griffin
Bureau

on Defendts motion to put off the Enquete from absence of Defendt and his Witnesses —

Townsend for Plff — the affidavit not suff. nor in the form required by Rules of Practice to put off the trial — does not contain the names of the Witnesses, their residence, nor what they can prove —

Mo. rejected —

No. 20

Osborne
Hamilton

on Defendts mo. to quash writ of fa. as not having been indorsed as by Rule of practice —

Townsend for Plff — states, that the omission of the words in the rule, not sufficient ground to quash the writ — the law grants the fa. and writs: does not make this omission fatal — It is not the fault of the Plff, if the writ has been irregularly executed — the Sheriff ought not to execute the writ, or to make the indorsement required by law. —

Ogden for Defdt — It is the business of the Plff, or his attorney to make the Indorsement required — and the exon of the writ without this is illegal —

№ 234

Lottinville
v.
Dinaime

action for recovery of damages for value of a horse. –

Vezina for Plff. – The Defendt. borrowed horse from Plff – bound to have same care of horse as he would had of his own – is liable for the faute legere, in all contracts of bienfaisance. – offers to evidence, to shew that Defendt. had ill-used the horse – had gone further with him than was necessary, kept him till next day, and went to an adjoining parish with him –

Poth. Cont. bienfce № 48. – borrower ought to take all possible care of the thing lent –

Tonnancour for Defendt. – There is no proof that the horse was ill-used by Defdt – not proved that he died of the ill-usage – or that he was mort fondu – The Plff left it to the Defendt – to declare in his conscience whether he had ill-used the horse, and upon saying that he had not, he gave up the point, saying, he would make him a present of the horse –

Thursday 14th Jany. 1819.

No. 234

Lottinville
v.
Duaime

On rule to shew cause why writ of fi. fa. should not be quashed as having been irregularly sued out.

Jonnaccour for Defendt. There is no Judgt which condemns the Defendt. to the Costs for which the Extion has issued. The Court dismissed an Exceptn but did not adjudge any Costs.

Verzina for Pltff. Every Judgt rendered agt a party carries Costs along with it, unless the Costs are reserved. this proceeding is irregular, it ought to have been by an Opposition made by the Defendt à fin d'annuller. The irregularity of the writ does not appear on the face of it, and cannot be enquired into upon motion as to any extraneous matters.

Jonnaccour in reply. The opp. à fin d'an. is where the Extion has been irregularly executed. here it has not been executed at all on the goods of the Defendt but on the goods of another person.

N°104

Touss^t. Pothier
Timothy Hibbard

Ou action petitoire —

Veronica for Pltff. The defend^t. is in poss. of a lot of land and mill in the Seigniory of Lanaudiere belonging to Pltff, which he now claims. — The Defend^t denies all the facts in the declaration states that the late M^r DeLanaudiere had promised the lot in question — The Defend^t has stated that the Pltff is not the regular representative of the late M^r DeLanaudiere — but it is enough that the Pltff is in possession of the Seigniory to entitle him to this action, as maxim is nulle terre sans Seigneur. and whoever is proprietor of the Soil is proprietor of all buildings thereon — The defend^t claims the right of property and of possession — but shews no title Poth. prop. N° 177 — 05mo. what is built on the soil belongs to the owner of the soil by droit d'accession —

Lafresnaye for Defend^t — The Defend^t built the mill & has been in poss. of it for several years. and does not belong to Pltff — That Pltff's title is not sufficient to entitle him to this action — the Defd^t was in poss. of the Mill before the purchase of the Pltff. Poth. prop. N° 32A. and therefore Pltff. has no right to action not having justified any right of property prior to the Defend^t possession. —

That

That Pliff ought to have given the alternative in the conclusions to pay the Mill, or allow Defr to take it away — That Pliff has not proved any damages, as at all events, the Mill was in such a bad state as not to be serviceable — That by protest made by Pliff. in Nov. 1816, it appears that Pliff had made over the Mill to one Charles Dunn, who alone was entitled to claim any advantage arising from this Mill, had he Pliff been entitled to make it over to him —

Veziria for Pliff.— The poss. of Defr although prior to the purchase of Pliff, yet was not a legal possession under any title, the poss. of the pliff as Sequestre represents the poss. of the persons from whom he purchased — The Defend. is possessor de mauvaise foi, and therefore not entitled to any alternative to take away the mill or to receive the value of it — The Pliff never sold the Mill to Dunn — it was only a temporary possession he gave him —

—

No. 224

B. Hart
Wm. Gilson } action petitoire —
Hearing on Exceps. per. à la forme.

Veziria for Defr — In every petit. action, the property

property ought to be clearly described and set out in the declaration – This is not done – Pltff. claims a part in the Center of 200 arns, but does not describe what part – the tenans & aboutissans ought to be described – Bourn. art. 3. tit. 9. ord. 1667. – so held in case of Indians &c

Ogden for Pltff – The property is held in free & common Soccage and not to be sued for under the french law – the description is sufficient of land held in a township, where no more precise description can be given, viz. No. 14. in the 7th range of the Township of Melburne

Vezina for Defend. This not a question touching the tenor of the land, but touching the course of proceedings in the Courts of this Province, and whoever comes into this Court to claim its aid must claim it according to the known forms established by the Court –

№ 203.

Pacquet vs Momeny } On rule nisi for renewg Judgt &c see case 11th inst

The Court discharged the Rule wt Costs, considerg it irregular befre obtainig taxation of Costs, inasmuchas the sum demanded for the Costs had never been taxed, and there could not be a second rule had for declarig the Judgt executory for Costs, after one had for the principal —

№ 105

M. Swz. Voyer vs Pennoyer and Divers Oppos } Case argued the 30th Sept. last & the 11th inst.

The Court held, that without enterg into the consideration whether the Oppositions were regularly deposited with the Sheriff on a Sunday, that they were too late had the 2d of Augt been a Judicial, day, as there were not 15 days to expire befre the day fixed for the Sale at the time the said Oppositions were so deposited accordg to St. 41 Geo. 3. ch. — the rule was therefor made absolute —

№ 41

Morin vs Dumoulin } The Court were of opinion that accordg to the demand contained in the declaration

no—

no right in future could be bound – as by paying £11 – the Defend. would be liberated from the whole demand, without reference to any future claim. cu

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№ 234.

Lottinville
v.
Duaime

The Court considering the evidence adduced, and the nature of the Contract between the parties, which was a prêt à usage, when the law holds the borrower to be liable for the slightest fault, "levissima Culpa" gave Judgt. for the Pltff for £15 – for his damages & Costs –

№ 184.

Bureau
v.
Bellerose
&
Lottinville
Oppt.

The Court were of opinion that the Sheriff was not entitled to his poundage upon the monies he had not levied namely, the sum which remained in the hands of the purchaser as the Power of the Oppt. being the charge subject to which the land had been sold, and that the poundage could be allowed only upon the

monies

monies which he had actually received, which the Court considered as the monies here levied — They therefore directed that the Sheriff should amend his return in this respect and thereupon that the Prothonotary should proceed to make a new projet of distribution of the monies levied — the Sheriff to pay Costs — Case at Quebec. Young v. Shepherd decided in appeal in 1810 — Case at Montreal Plenderleath v. Burton & Turnbull val. Obs pts — 1817. —

No. 20. —
Osborne
v
Hamilton

The Court held the execution of the writ of Ca. ad resp. without the indorsement as required by the Rules of Practice, to be irregular, and therefore declared the Rule obtained by Defendant absolute

No 15
Schiller
v
Dunn —

The Court were of opinion, that even admitting the motion of the Defendant to subsist as equivalent to the Requête

required

required by the Code Civile, yet it was necessary that a special power of attorney ought to have been produced therewith from the Defendant to his attorney, to warrant the demand for an inscription en faux, — according to the art. 6. Tit. 9. of Ordr. of 1667. which constituted the law and practice in this Court on that point — The Court therefore discharged the Rule —

—

No 86

Bostwick & al' Exrs. — vs Johnston & Contra

The Court held that the Incidental demand set up by the Defendant could not be received, inasmuch as the persons who were interested in that demand were not before the Court, namely the heirs or Legatees of the late — Field, — they therefore gave Judt for the Plffs on the demand in chief and dismissed the Incidental demand, sauf &c —

Mr Bidard differed in opinion from the other Judges on this point. —

—

Friday 15th Jany 1819

No 186

Pre Millot
Josué Giffrard

action en partage among heirs
on hears on Report —

Tonnancour for Plff. demands the hom. of the Report —

Vezina for Defdr. The Report is informal, as it does not appear that he gave notice of his proceedings to the parties — does not appear that the parties were heard by the Notary or that they even had an opportunity of being heard — The Report is besides insufficient as it does not decide upon the points referred to the Notary as Practicien — has not admitted the claims of the Defendant et his Cohéirs for having — supported their common parent. —

No 269.

Jnh Bte Pelltier
Ant. Gadoua
et St Louis

action of Complainte —
hearing on report of Surveyor —

Tonnancour for Plff demands hom. of the Report.

Vezina for Dfs. There can be no hom. of this report as nothing was left to be decided by the Surveyor the mo. of Plff ought to have been that the Report should be filed and make part of the Record.

Saturday 16th Jan3. 1819

№ 231

Moses Hart
Wm. Gill Wales } Action of assumpsit on promissy note
On trial by Jury —

The Jury being called, the Defend. by Mr Ogden his Att3 challenged the array, stating for ground, that only 23 Jurors had been returned as summoned by the Sheriff, 13 of the number having been struck from the list given in by the Prothonotary cites 2° Jud. 712.

2. 712 Ins

№ 292

anna Walter
Pr. vs Gowin } action on Obligation —
hearing ex parte. —

Tomancour for Pltff. action ag' Defd. as a Caution solidaire w'. the principal debtor

№ 193

Jos. Stone
Isaac vs Stone } action upon Defd3 acknowleg. pr certain notes —
hears ex parte —

Tomancour for Pltff — proof of Defd. handwriting is made out, not by similarity as insinuated by Defd. counsel, but by having seen the party write — 1 Peake 110 —

Ogden

Ogden for Defend— The exhib. No upon wh. the action is founded, is dated in 1812— The Witnesses draw their conclusions from similarity of hand writing. c

No. 260

Osmyn Griffin
Pr. Bureau

Action on Special assumpsit
hears on merits. —

Jonnaccour for Pltff. Pltff contracted with Defend. to carry the post offin Mails for a certain length of time action is for 2 quarters expired in 6 July last — The Pltff endorse complete. c writs for Endgt.

Vezina for Dfft— The Defend. states, that he has paid certain monies to Pltff, by draft or otherwise to the amount of £30. 5 —

Jonnaccour — says credit has been given for this sum

No. 224.

B. Hart
Wm Gilson

The Court were of opinion, that the discription of the part of the lot in question, namely "50 acres in the center of the lot No. No. 14. in the 7th Range of the Township of Melbourne" was not sufficiently certain, and therefore admitted Pltff to amend his declaration —

№ 234

Lottinville
Duaime — } The Court were of opinion that the Rule ~~obtained by the~~ Defendants motion ought to be dismissed, inasmuchas there was no apparent irregularity on the face of the writ of Exon which had been carried into effect by the Sheriff, and that Defend. must come by opp. after d'annuller, under which only a regular contest could be raised touching all matters how the said writ —

—

№ 269

Jn B.te Pelletier
Ante. St Louis } The Court directed the parties to be heard on the merits before adjudging on the rule obtained by Plff for hom. of Surveyors report

—

Monday 18th Janv. 1819.

Touss.t Pothier
Jim Hubbard } The Court gave Judg.t for the Plff. w.t £10. damages considering that enough was stated in the Declaration to maintain the action as an action petitoire, the Plff alledging & proving that he was Seignior, proprietor & possessor of the lands ungranted in the Seigniory of Masquinongé & entitled to have poss. of the Mill in question as built upon part of those lands. — M.r Bedard differed in opinion — held that the Plff ought to have concluded to the recovery of the possession, as well of the ground upon which the mill stood, as of the mill itself. —

No. 15.—
Benj.n Schiller
Wm. Dunn } On rule obt.d by Defend.t to shew cause why he shd. not be permitted to fyle requête en inscription en faux. —

Vezina for Plff. The Defend.t is too late in his application — the Defend.t has filed no plea and is now foreclosed — the Defend.t ought to have obtained a delay so as to prevent the foreclosure — the Inscription en faux is an incident in the cause, which must arise upon some pleading made in the Suit — The Defend.t had to friday at 6 o'clock to fyle his plea but has not done it — That the requête filed is not sufficient, as it ~~ought to~~ demands to be permitted to do an act & claims the annulment of the Jugt.

Ogden for Defend- This application must be made before plea- 1 Pig. 219.- had to the 14th at 8 o'clock P.M. to fyle plea- but understood that all pleas were to be fyled on morn3 of 15th- no foreclosure obtd till 15th- when the registe en Inscrip: en faux was fyled Conclusions in the registe are regular - cites. Fr. Dic. Vo Inscrip: en faux -

Vezina for Pltff- There must be a permission obtd from the Court to make this Incident, which is not demanded

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No 253

Moses Hart
G. Pezzard & Champlain
& Dwyer Oppt

On rule to shew Cause why the Pltff shd not be permitted to retain in his hands the amount of Dower purchase money of the he has pd to the Sheriff, as being the amount of the ~~purchase money~~ Dower to of the land purchasd is bound -

Vezina for Pltff- On David Hubert & wife, claim £125- for the dower due to the wife, for of an Opposition à fin de conserver is made- this oppn: if not founded, will be rejected and the Pltff liable to the dower - as not being owing- The land was sold for a debt contracted subsequent to the right of dower - or that Defd. give security -

Lafrenaye for Dwyer oppt- The Pltff is not entitled to obtain the money, has no claim on it

Tonnancour for Hubert & wife - When the Sale of the Creditor is gone he must have the proceeds, Law this

can

case the Opposts are Creditors of the Defendt and entitled to the amount of the Town —

No 180

Genev: Chartier
vs
Jos: Masse Baumier

Action to rescind a deed of donation —
hearing on exceptions to form. en droit

Ogden for Defdt. action irregular, as at the time of instituting this action there was another action between the same parties in this Court — the first action is for £30 — dam. for not having complied with the donation — the present action is for rescision for the same grounds —

Vezina for Pltff — actions are different — the present action upon a new right acquired since the former action was instituted —

Order for Proof

No 249

Le André Duchesne
vs
Franc. Ladouceur

action for damages done by Defendt to the Pltff's Saw-mill —
hearing on merits —

Vezina for Pltff. contends that proof of fact is made out — concludes that Experts be named to estimate the damages —

Tonnancour for Defd – action must be dismissed the Pltff. alledges no contract between the parties, only that Defend^t. entered Pltffs mill & injured it – The Pltff admits that Defend^t. entered the mill with his consent to saw boards on a certain contract – the Defend^t. was not skilled in this work & not liable for any injury happening while Defd^t. worked the mill as he was the servant of Pltff – who should blame himself for having let his mill to such a man – The Defend^t – did not use the mill – it is in proof that it was the sons of Defend^t – who worked at the mill, they were of age & worked on their own acc^t. and Defend^t. not bound by their acts. – That Defend^t. is not liable for the acts of his children even if they were minors – cites – Dic Droit. p. 613 Just. Instit. liv. 4. T. 5. § 2 – Poth. Obl. N^o. 721 – Bourj – 2. Bourj. aux notes. p. 504

N^o. 269

Jn B^te. Pelletier
Ant^t. Gadioux
dit S^t. Louis

action en complainte –
final hearing –

Tonnancour for Pltff. Pltff in poss. for four years past – the ditch dug by Defd^t. is within 4 inches of Pltffs house, and cuts the Pltffs lot of land – this further verified by the Survey and plan of the Surveyor. – Vezina for Defend^t – There is a dispute in this Case

touchg

touching the possession of the parties — The plan filed is in contradiction with the declaration — as it states the Pl.ff's lot to be of a regular form, an oblong square whereas the declaration states it to be of an irregular form The Defend.t has proved his poss. by cutting the Canal in question for upwards of two years — there was no mark or boundary to shew the poss. of the Pl.ff. except the house in which he lived, and in this the Pl.ff has not been troubled — the Defend.t shews also a title to the land which Pl.ff claims — to shew that his poss. is founded and claimed as a proprietor — Poth. poss. No. 105 — points out the kind of Judg.t which ought to be given in this case where two persons possess — viz.t that the Court should suspend its Judg.t until the decision on the action petitoire The Pl.ff has made no proof of damages — The Pl.ff concludes only to be maintained in the possession of the lot — not that things be put in the same state they were in before the trouble — & this the Court cannot grant —

Tonnancour in reply — contends that proof is suff.t —

No. 16 —

Gilbert Henderson v. Pre. Jouinval — } Hearing ex parte — Action on oblign —

Tonnancour for Pl.ff asks Judg.t —

Ogden for Deft — There ought to have been a day for enquete before Pl.ff is entitled to Judg.t

Tuesday 19th Jany. 1819.—

Enquête Day—

Wednesday 20th Jany—

No 231

Moses Hart
Wm. Fish Wales

Hearing on law and state of pleadings—

Verzina for Pltff— Defendt has pleaded matter of Law which ought to be submitted to the Court and not to a Jury— whether Defendt is entitled to three days of grace before action instituted on a promy note— There is no law to warrant this exception— The Defendt founds his right to three days of grace on immemorial usage, but no such usage is to be found in the laws of this County—

Ogden for Defendt— The temps: excep: pleaded is regular it supposes even if such note had been made, apt that action premature. (Mr. Brown— hyp. pl. is absolutely prohibd by Rule of Prac) — By com. law & usage of England three days of grace on a note— This Defendt is entitled to by the laws of England— The Custom may be tried by the Jury— or by the Court—

No.

Verzina— the demand can be dated only from the issue of the process, and not from the date of the declaration— the process was served 6 days after the note became due—

No. 158.

P. M. Cressé
vs.
Lo. Chapuron
Calvin and Alexander Gt
& Jos. Carmel. ar Gt

action for exhib. de titre —

on demande of - Garant as the arrear Gart.

Lafrenaye for Ar. Gart — The ar. Gart has nothing to do in the Cause, as all the titles in question regard purchases subsequent to sale by him to Alexander. There is no question before the Court but for exhib. de titre and there can be no garantie until demande be made for consequents. —

—

No. 15.

Benj. Schiller
vs.
Wm. Dunn

Justice, Reid & Bedard were of opinion that by the rule of practice in this Court, the Defend was in time to make his inscription en faux although the time for pleading had elapsed inasmuch as no forclosure had been obtained against him by the Pltff — Mr J. Bowen contended, that the Defendant was too late in his application, as even according to the Rule in this respect, it ought to have been made within the time for filing a plea to the Jurisdiction, as the facts alledged by the Defend. in his requête were of a nature to constitute a plea to the Jurisdiction — That the Sheriff's return could not be considered as coming within the Rule of practice — and that decision had at Quebec, held, when the party once appeared he was not entitled to this course of proceeding agt the Sheriff's return — it being discretionary in the Court to allow it or not as they should see fit —

Ordered that Inscription of Requête be made en Defd. That he answer

May the Union of Bacchus & Ceres prove a support to this Establishment, and always produce hilarity & good fellowship. —

May the Citizens of 3 Rivers have frequent occasion to witness the successful progress of the Agricul[l] Society among them, and to ~~join~~ unite Bacchus & Ceres in supporting this establishment —

May Success in Agriculture excite to enterprise ~~improvement~~ and open the road to — improvement in the arts & sciences & a true knowledge of the true interests of the Country —

Thursday 21 Janv 1819

Moses Hart
v
Wm Seth Wals

a re-pleader ordered — The Court being of opinion that by pleading the matter of Law the Defendt ought to have admitted the fact, so as to bring the point before the court regularly —

№ 39
Michel Robitaille
v
Jos. B. De Noreville

action agt Defendt as Caution on contract on hearing en droit

Vezina for Defendt contends that there are facts in the Case to be proved

Order for proof

Friday 22d Janv 1819.

№ 45.
Pre Gonin
v
Ignace Gauthier

Hearing ex parte —

Saturday 23 Janv. 1819.

№ 249.
Le Amd: Duchesny
v
Franc. Ladouceur

Action dismissed —

No. 269

Jn Bte. Pelletier v. Ant. Gadioux dit St Louis — Judgt. —

No. 18

Pelagie Grenier v. Pre. Lachance — hearing on exceptn. pre.

Vezina for Deft. action of seduction - qt. is an injure de fait, & is prescribed in the year & day — this prescription has been pleaded by Defendt. — Stated that the seduction took place four years ago — 5 Inst. Inst. p. 375 - & 403 — The Pltff alledges an illicit cause as the ground of the seduction, namely, that the Defendt. promised to marry the Pltff after the death of his wife, who was then sick. The Pltff in this alledges her own turpitude & cannot be maintained in her action —

Tonnancour for Pltff — The plea of prescription does not apply in this case — it applies only in cases of injure verbale, & not injure de fait — cites Denizt. vo. Injure No. 12. — Repn. vo. Injures — injures reelles ne se prescrivent que par 20 années — 6. Inst. Inst. p. 242. liv. 4. tit. 12 The action here is not only for the seduction but also for the maintenance of the bastard child —

Sur. Dic. de Droit. vo. Mineur — "contra non valentem &c.

Id — vo. Prescription de droits ou de biens appartenans à des mineurs. —

No 249.

Dom. Rex
Inf. &c. vs Lozeau

action of bornage. —
Hearing on law as to right of prescription —

Verrier for Defendt — The original title of the Defendt's Seigniory gives him give about 2 leagues in front, between certain specified limits — by the same depth — the extent in front is found to extend between the 2 points to 2 leagues & 3/4 — & Defend. ought to have the same depth — That at the depth the Crown has granted another Seigniory bounding on that of Defendt — which shews that the Crown is not the neighbour of the Defdt —

Ogden for Crown — By Defend. title in 1683 — he is entitled to about 2 leagues in front — if there was a little more Defd. was entitled to it — on ant. of the fixed limits but he can have no more in depth than the 2 leagues because there was no fixed limits, but the description of the title —

—

No 94

Touss. Pothier
John Hubbard

action petitoire for a lot of land. —
On exception as to Jurisdiction —

Verrier for Pltff — The parties have admitted that the land in question is in the district of Montreal — but Pltff contends that Court must still take cognizance of Cause — the Defendt has not availed himself of the want of Jurisdiction in the Court, and it cannot be mero motu

tain

raise the objection — Poth. Proc. Civ. p. 34. ch 2.
The Defend.t may be sued in a real action, either at his domicile, or in the Jurisdiction where the estate lies —

No. 397.
Jos. Pozzard de Champlain
v
Thomas Coffin
&
Thomas Coffin oppt —

On opposition afin d'annuller —
Connaissance for ~~Pltff~~ Oppt in 1805 the Wid. Dorvilliers sold to Defd.t & Mr Leblanc a lot of land called pointe des Roches —
By an action en bornage Coffin & Leblanc were evicted of a great part of the land — 163 arp. 40 perches — In consequence the part of the price due by Coffin was left in his hands till the children of Widow Dorvilliers came of age, paying interest — when they came of age they prosecuted Coffin for their shares & obt.d them — the present action on opt Exon issued is for the interest due to the widow Dorvilliers on her share of the principal of the purchase money in Coffin's hands — After Exon sued out — the Pltff & Leblanc proposed to Defendt a settlement — that if he wd pay the half of the Costs which Leblanc & Coffin had pd in the Court of appeals on the suit ag. them then the other half should remain in Coffin's hands till it should be ascertained what deduction was to be made for the deficiency on the land sold to Defd. & Leblanc — On 21 Sept. the Defend.t paid to Leblanc the monies stipulated in exh. No 8 — according to the terms of this arrangement —, leaving a balance of about £16 upon the

the calculation of the interest due to the Pltff, which the Defend.t has tendered and deposited —

Vezina pr Pltff. The propositions made by the Pltff were never accepted by the Defend.t — no proof on this head: Pltff besides not bound by the propositions of the advocate. nor can the Pltff be bound by the pay.t made by the Opp.t to a third person without his consent —

Monday 25th Jan.y 1819. —

Touss.t Pothier v. John Hibbard } action dismissed. —

No. 181
Bureau v. Bellerose & Hartsal oppo.t } The Opposit — to fyle his contestation to the Jud.t of Distrib. —

No. 2
M. Ant.e Deforges v. Jos. Thibaudeau pere }

action d'injures. —

Vezina pr the ~~Defd~~ Pltff — contends that Defend.t cannot be admitted to produce in evidence the paper in question, as not being relevant to the issue between the parties —

Lafresnaye pr Defd. — Pltff sued out a Sum.s in the Inferior

Inferior Court for £11. for same cause of action — but the cause was not returned into Court — the copy of that sum — not the best proof, as Pluff has the original in his possession, —

The Court admitted the motion —

No. 94
J. Pothier
vs
John Hubbard

On motion by Defend.ts Counsel for distraction de frais — 2nd —

Tuesday 26th Jany. 1819. —

No. 274
Wm Lindsay
vs
John Taplin

Action petitoire — for lot No 8 in 1st range of Township of Wickham. —

Tonnancour for Pluff — By the Patent granting the Township of Wickham, the lot in question is granted to the Pluff

Ogden for Defend.t — denies that Def.t is in possession of lot No 8 mentd — the Patent on this is erroneous, as no such lot exists — Pluff has made no proof of it — the diagram produced is of no validity — does not appear when it was made or signed — the Survey made by Pluff shews that no such lot exists — the lot in dispute appears to be a Crown lot — no suff.t evidence to maintain the action —

Tonnancour for Pltff — The Defend. admits no title but contests the identity of the lot — this identity is made out by the diagram & Survey. The diagram refers to the grant —

Wednesday 27 Jany.

№ 397
Champlain
v.
Coffin
&
Coffin oppt

Opposition dismissed —

No. 146
Jos. Grammont
Ambre. Verrette v.
J.Bte. Boisvert & (Rule discharged —

No. 184.
Pre. Bureau
H. M. Bellerose v. & On opposition to hom. of report of Proths.—
Divers Oppt.—

Vezina for Moses Hart — says, he ought to
H. M. Bellerose & all other opports.— by priority
of mortgage — The exhibits in support of his claim
not filed, because it was necessary under the former
rules of Prac: under which the Oppn. was made, that
oppos. should be put en demeure. —
Tonnancour for Pltff. contends that under Rules of
pract. sec. 12. No. 9. 10. & 11 — the Oppt. is in default —

No. 42
Marie An. Dorval
Ed. Guillet v. (action en separation de corps & de biens —
Default case

No. 46
Cath. Jacot
Simon Julien v. (Same case —

No. 3
Moses Hart
Do. Lafresniere v. (

N°. 125.

Pre. Rousseau
vs
Fran^s. L. Lacroix
&
Fs. L. Lacroix
pere —— opp^t

On opposition afin d'annuller —

Vezina pr Pltff — Oppos: is irregular
it is afin d'an. but the conclusions are
afin de distraire — all is regular. & the
Oppo^t. claims that certain effects seized
be delivered to him as being his property — That
there is besides no tradition alledged to have been made
of the moveables in question, which appear to have
been sold by the Defend^t. to the Oppo^t. subsequent
to the Judg^t. rendered in the Cause —

Thursday 28. Jan^y

Pre. Rousseau
vs
Fran^s. L. Lacroix
&
Fran^s. L. Lacroix
pere —— Opp^t

Opposition dismissed. —

N°. 61

Marie An. Paquet
vs
Jos: Momeny.

On rule for renew^g Judg^t
Ogden pr Def^dt — It has already been decided
that the Costs must be taxed, before such be made
executed. —

Nº
Cath. S. Derivés
v
Franç. Boucher } action on deed of Sale - for a payt. due on it -

Ogden for Defdt - always willing to pay, but the Pltffs performed all they were bound to do by delivery of the titles, &c. they have not done

Nº 240
Chas. Gouin
v
Franço. Evans } action of assumpsit on Note due

O'Con. for Defdt. The compromis between the parties is informal & cannot bind them - this part of demand must therefore fail - no proof of the services -

Nº 257
Jacques Voyer
v
Jos. Badeaux } action on deed of Sale -

Lafresnaye for Pltff - the trouble alledged not sufficient. Poth. Vente. Nº 280 - 282

Nº 280

Vezina for Defdt - There exists a special mortgage on the Island for a Rente Constituée in favor of Mr Fressé - for which Defendt is liable to be troubled. -

Lafresnaye - cites case of Grandmonde - Verret of last term. -

№ 2

Mr. Ant. Desforges
vs
Jos. Thibaudeau } action d'injures. —

Vezina for Plff — contends that proof is made out to support the action. —

Lafreniere for Defdt. The proof that Plff had a bad character before the speaking the words in question is sufficient to exonerate the Defendt. —

Mr Ogden of Counsel for Defendt. — Plff not entitled to damages — at all events not to more than cost in the suit in the Inferior Court —

—

№ 237

Moses Hart
vs
Chas. Thomes. } action on Obligation. —

Ogden for Defdt. alleges usury. —

Vezina for Plff — no sufft facts of usury pleaded

—

№ 229

Michel Deshautels
vs
Jos. M. De Tonnancour } action en resision. —

Vezina for Plff. The titre de nouvel is wholly variant from the old title — Objects also to validity of the title, as the same is executed in presence of two Wits — one of whom is the brother in law of ~~Plff~~ Defdt

Tonnancour for Defdt. The title ought to be declared null only for that part of which has been changed as to the nature of the charges imposed — The titre nouvel title is passed 11 years

eleven years ago — as to Nullity — There is none — adjudged valid by Jud^t. of the Prov. Court 4-9 June 1818 — Not a terme prohibé in an act. —

No. 231.

Moses Hart vs Wm. Sills Wales

Action on a promissory Note — hearing on law

Ogden for Defd^t. pleads a temps. ex. per. in droit that Defend^t. was entitled to 3 days grace before institut^g action — note payable on 1^r. Sept^r. 1818 — Writ of Sum^s was sued on 2^d Sept. Sum^s on 5^th days of grace how must be calculated from 2^d Sept. & Defd^t. had the whole of 5. day to pay — Chitty. 265. 6 — also 212. & 214 — Selwyns N. P. 997. — Chitty 213. — Selwyn p. 307 —

Vezina for Pltff — There is no law in force in this Country which gives the days of grace pretended by Defend^t. The laws of England in this respect not in force in Canada — The Ord^e. of 1777 — establishes nothing of this — In 1793. a law was made to facilitate the negotiation of Promissory Notes — but does not determine any thing on the point — only between the Indorsee & Drawer — The Defend^t. ought to have pleaded a tender with his plea otherwise not admissible. 4 T. Rep. 148. — Kyd on bills. 124 — The Exceps. pleaded ought to have been dilatoire to suspend the action till the days of grace expired — The demeure must be considered only from the day of service of the process and not from the day of suing out writ. —

124

148

B: Solomons
Jos: Leblanc
Jos: Leblanc opp
et al

Rehearing on opposition. —
On opposition of Ant. Erwin Bellerive

—

No 12

John Davidson
Pre Bureau

action for House Rent on lease. —
Opon for Plff - Defdt says he owes only £95.17.0
only question is as to costs on Demand above £100 —

—

No 231

Clve R. Ogden
Geo: Forsyth

action for fees of Pltff as Att3 —
Verzina for Defdt Submits con - but not any
thing for extraordinary, as noth3 is proved. —

—

No 39.

Michel Robitaille
Jos: De Neverville

action agt Defdt as Caution or Security of one
Prevom —

Ogden for the Pltff. The undertaking was for the personal
act of the Prevom & the offer to execute it by another
person was insuffe Pothr. Ob. No 396. - 349. —

396

Verzina for Defdt The Caution was bound to do no
more than what the Principal debtor was bound - & this
he offered to execute. - the act of association between Pltff &
Prevom, was that Prevom should furnish & do certain things

under

under the direction of the Defend^t — n this there was no personal act on the part of Provost which could not be performed by another — Poth. Obl. 270. see also 404 — Not said that work should be done by the hand of Provost — Poth. Soc. N^o 142. The failure of Provost did not alter the Contract as to Defend^t — who still had the right to avail himself of the same — That the Judg^t of Provost cannot bind Defend^t who was no party to it — It does not appear for what cause, the Judg^t was rendered ag^t Provost — Poth. ob. N^o 404. costs allowed only from date of notice of prosecution — Ob. N^o 274. in fine — debt of one debt of all —

—

N^o 134.
Wm Heywood
vs
Nath^l Beaman

On Defr mo. to dismiss cause from want of proceedings —

Opposed Defr — there was a proceeds last Term — Vizinia — for Defr — no proceeding on part of Plff

—

N^o 291
M. Sus. Voye
vs
Badeau

On motion for execution of a title of a certain parcel of land to Plff

Friday 29th Jan'y 1819.

No 61
Marie Ant. Pacquet
Jos: Momeny — } Rule absolute

No
Cath. I. Desrivieres
Fr. F. Bouchu } Judgt for Pltff

No 240
Charles Gouin
Franc. Evans } Judgt. for amount of note saving recourse as to amt. of int

No 257
Jacques Voyer
Jos. Badeau } Judgt. for Pltff — on giving Security to save Defd. harmless as to mortgage stated — & saving recourse to Defd. for monies alledged by him to have been paid to Pltff

No 2
Miss. A. Desforges
ante — Thibaudeau } Judgt for Pltff —

No. 237
Moses Hart
Chas. Thomas } Judgt — non pr proof

No. 229
Michel Derbanter
Chs. M. De Tonnancour } Re-hearing ordered next Term

No. 231
Moses Hart
Wm. Sills Wells } Do — Do

No
B. Solomons dal
Jos. Leblanc
& Dwrs Appts } Judgt on appt — setting aside Seizure

No. 12
John Davidson
Ors. Bureau } Judgt for Costs as above £100

No. 231
Chs. R. Ogden
Geo. Forsyth } Judgt Quash

No. 39
Michael Robitaille
Jos. De Niverville } Ledge dismissing action

No. 134
Wm Heywood
Noah Beamer } Rule absolute —

No. 291
M. S. Noyes
Jos. Badeau } Interlocutory