King's Bench. Montreal

Notes. Vol. I

1846.

Johnson
v
Hutchins } Cont^d —

up his pretentions as Seignior to any alienation or mutation fine, Lods & Vents retrait or otherwise, or to the toll called bannalité, or to any other right as Seignior as aforesaid — That even if the aforesaid deed of Sale was valid in all its parts, yet the Pltff wd be still entitled to his action and demand aforesaid, because he avers, that on the 19th day of March 1807, the said Seigniory was seized & taken in execution by the Sheriff of this district under a writ of Exon and out at the suit of the said pltff, and afterwards adjudged to the s^d Pltff on the 21 Nov. following with all the rights of Cens & rents, lods & Vents & other Seigniorial rights thereunto belonging according to the original deed of Concession by the Crown, which destroyed any right of exemption which the Deft can now set up against such Seigniorial

rights

rights claimed by the Pltff —

On Friday 18th Oct 1816. —

An Interlocy was given by which it was ordered that the Defendt should exhibit his title to Pltff, for such further proceedings thereon as to justice shall appertain —

The Defendt having complied with this Interlocutory, the Pltff then proceeded to make proof of the quantum of cens & rents paid by the adjoining lands to that possessed by the Defendt — and now prayed Judgt as Defendt. for such cens & rents —

The Defendt observed that by his title deed, and more especially by the title given by the Seignior to the said Lane the Cens is limited to 1 Sol for every 40 acres, which ought to bind the present Pltff — That the cens being matter of Convention, as to quotité ought to be limited to the sum agreed on by the original deed of Concession — and altho' the Pltff

be

the purchaser of the Seigniory by decret yet this did not require any claim of exemption to be set up by the Defendt in regard of the quantum of the cens he was to pay — it was understood that the Estate was sold subject to the droit de cens, this was never contested, and in regard of the quotité du Cens, it must be regulated by the deeds & titles — A Seignior cannot exempt his tenant from the payt. of cens, because upon it is founded the right of Lods & Ventes but he may diminish this cens to the lowest extent, and even beyond that here stipulated of one Sol for every 40 acres —

Bridge & Penn
vs
Flynn & ux

On verdict — as to its sufficiency

"The Jury give a verdict for the
"Pltff, without interest, and without
"taking away the right the Defendants
"might have, to produce in payment of what
"they owe, any receipt or receipts they may
"hold independant of the sum they are
"credited for." —

5. Com. Dig. Tit. Pleader. (S 28). p. 512

Surplusage does not avoid it — as
if the Jury find a direct verdict for the Pltff
or Defendt and then add uncertain
or contradictory matter —

So if it finds so much for damages
"to be paid in dying if it can be" — the
last words shall be rejected —

So if it finds the issue and other matter
out of the issue, which makes contra

Id. (S 40). If a verdict begins with a
direct verdict, and afterwards finds special
matter upon which the law will adjudge
contrary to the direct verdict, & submits
the whole to the Court, the Court will give
Judgt according to the special matter. —

See case 1 Raym. 669. Palmer. v Stavely

In an action for money had and received if the declaration states, that the money was had and received by the Defendt for the Plff "to the use of the Defendt." — the Court will after a verdict reject the words, "to the use "of the Defendt."

Cr. ff Pais. 298 — refers to case in Ld Raymond

Leffevre & Desmoulins } on Inscription de faux Demandt. v. Faux Principal. 3 12. No 3. p. 471 — 473

11

Lefevre et al.
v.
Desgroselliers } On question whether the witn. to the will can be exam^d. on an inscription en faux —

Dic. des arrets — v^o — Notaire. §. Notaire Temoin

Sentences du Chatelet de Paris des 21 Octr. 1609. et 8 Janvier 1647 — Et arrets du Parlement des 7 Mars 1644. et 20 Août 1650, qui ont dispensé les notaires de porter temoignage et deposer des choses concernantes les faits de leur charges, et de reveler les secrets des parties —

Id. v^o — Notaire. §. Notaires. Testament.

un notaire n'est tenu de repondre par serment que le testament dont est question ne lui a eté dicté par le Testateur, mais seulement transcrit sur une copie à lui apportée; et une revocation ecrite d'une main etrangere, souscrite par la Testatrice, ne suffit pour annuller un Testament

Id. v^o — Testament. § Testament Temoins —

Le 16 Janvier 1664, Jugé, que le fait, que les temoins n'ont pas eté presens à la

confection

confection du Testament, n'est pas recevable contre l'enoncé du Testament qui y est contraire - Journ. des Audiences. Tom. 2. liv. 6. ch. 4. sur arr. 2e avril Loret. p 781

Sed vid -

Id. Preuve - § Preuve Contrat -

Preuve d'un fait peut être admise contre un acte passé devant notaire, sans être obligé de s'inscrire en faux - Jugé le 13 Janvier 1598 - au sujet d'un Testament - qu'on soutenoit avoir été suggéré au Testateur quoique le Notaire qui l'avoit reçu, eut dit le contraire -

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Id. eo. verb. §. Preuve Testament. -

Quand il s'agit de prouver quelque chose pendant la confection du Testament la preuve doit être restreinte aux Temoins numeraires de l'acte ; Mais quand il s'agit d'autres faits, ou d'un changement ou d'une ampliation de volonté, la preuve en doit être reçu per diversos testes, c'est à dire, par autres temoins que les numeraires,

qui

qui soient gens de probité — Arrêt donné au Parlement de Toulouse, les chambres assemblées le 7 Avril 1601 — Albert. Vo Testament, quest. 23. n.

=

2 Arrêt de Loüet. p. 781.

Arrêt de Grenoble du 29 Janvier 1665, qui a jugé, que le fait d'incapacité de tester est recevable quand on soutient que le Testateur avoit l'esprit aliéné, quoique le Notaire ait dit qu'il étoit sain d'entendement —

= Sur 2e Despeisses. p. 754. —

Arrêt de Paris des années 1674 & 1677 qui ont reçu la preuve par témoins pour la suppression & lacération d'un Testament quoique soutenu imparfait & non signé, et ont condamné les parties & le Notaire aux dommages & intérêts —

=

Id. p. 780

On a demandé si les notaires ayant omis de faire mention par le Testament de telle solemnité, la partie étoit recevable

recevable a mettre en fait que solemnité avoit été duement observée, & le verifier par temoins, meme par ceux qui avoient signé au testament ?

Ans. en Negatif —

Sec 2 Desp. p. 753. Du Crime du Faux

La fausseté se commet de — comme lorsque le notaire ecrit dans un Contrat la reelle numeration des especes y être intervenüe, et que les temoins numeraires disent n'y être intervenü aucune numeration

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Id. p. 757. N° 16 —

Quand on ordonne la resomption des notaires & temoins numeraires d'un testament impugné de faux, bien que la reproche ne soit pas receüe, in his quæ intra, c'est à dire, que le temoin ne dit rien plus, que le contenü au testament ou il a signé, en ce cas le reproche ne peut point affoiblir le temoignage du temoin; neanmoins s'il ajoute ou depose d'autres points ou circonstances non contenüés au testament, le reproche sera receu comme ailleurs. —

Sec alia p. 572 — 3° —

№ 597.

Debarbeck
Finlay & Interrogs —

1 If it be not true, that the paper writing hereunto annexed, purporting to be — is of the proper hand-writing of him the Defendt — and by him written and addressed to the said Plffs. Attys in answer to a letter from the Plffs. Attys as therein mentioned —

2 The Defendt being required to look at the Plffs exhibt. № 1 filed in this Cause — If it be not true, that in the letter by him rec'd from the Plffs. Attys. in this Cause, was inclosed a copy of the said paper writing or exhibit of Plff № 1. now shewn to him Defendt — or what other paper if any was inclosed in, or forwarded with the said letter by the said Defendt — so received from the Plffs Attys —?

3 If it be not true that the several lots of land mentioned & described in the Plffs' declaration, are the same lots of land referred to in the letter or paper writing hereunto annexed respecting which he the sd Defendt has been here above first interrogated —

4. If it be not true that he the Defendt has already paid to the Plff in this Cause, sexpinial dues for the same lots of land, as being possessed by the Defendt —

Poitras
vs
Frereau

L'affinité n'a aucun rapport parmi nous aux successions, et elle ne donne aucun droit pour y prétendre +

Rep^re v^o affinité. p. 217. -

Poth. Don. ent. Vfs. p. 172

Donations faites par contrat de mariage par quelqu'un des ascendans aux conjoints, sont non sujettes a insinuation -

La raison en est que l'obligation de doter les enfans etant de la part des ascendans une obligation naturelle - ces donations ne sont pas tant des donations que l'acquittement d'une dette naturelle - D'ailleurs les mariages etant publics, & les ascendans qui marient leurs enfans, etant presumés les doter lors qu'ils les marient, ces donations ne peuvent être ignorées, & par conseguent n'ont point besoin de l'insinuation pour être rendues publiques -

Denizart. Vo aliments. § VI. N°

N°1 Le beau pere & la belle-mere sont obligés de fournir des alimens à leur gendre & a leur bru — & le gendre & la bru sont reciproquement tenus d'en fournir à leur beaupere, & a leur belle-mere — parcequ'on les considere les uns par rapport aux autres comme peres & Enfans — arrêts Brodeau sur Loüet —

N°.2.

№ 551

Hall
Stanley
& al.

Action of debt on obligation —
for £250 —

By obligation bearing date 1 March 1816 the Defendts acknowledged to owe Pltff a certain sum of £543. 10. 3 with certain interest thereon and it was agreed that the Defendts should pay this sum by instalments of £20 each month to commence on 1st April 1816, and in case they failed in paying any of the said instalments at the period appointed, that then that the whole of the said debt & interest thereon should be demandable & become due & payable by the Defendts to the Pltff, without any previous notice or demand on the said Defendts or either of them, and that Pltff should be thereupon entitled to all legal means for the recovery of such arrears as might be still unpaid at the time of such default — Demands balance £163. 10. 3 & interest from 8th Oct. 1815

Plea that Defendts have paid all they were bound to pay — That Pltff was bound to have shewn a demand on Defendts before they can claim the whole debt —

Replication, such demand not necessary by special contract of parties

The Court held that the Defendts were liable to be prosecuted for the whole debt as demanded and that no notice was necessary where the parties had expressly agreed to the contrary

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Bancroft } No 278 –
Dabin }

Action of assumpsit on a promissory note – for £20.15 –

Plea – Non assumpsit – and no value for note –

1. Horace Dodge – proves making of note by Defdt on his cross-exam says – that the same was given for a debt due to Lester Taylor & Co – but due to the Pltff as agent of that firm –

2. Jeremiah S. Holmes, the other wit – proves making of note, and says, that the value of the said bond or acknowledgt, was for a debt owing to Lester Taylor & Co and not for any debt due to the pltff personally —

Swedenmann
Pattie Lee } action for conspiracy —

1 Chitty. Cr. L. 837 —

Action for Seigniorial rights & dues

Johnson v Brown — On service of process on Defdt at his residence in the Seigniory, his domicile being in Montreal

Fact - That Defend.ts domicile was in Montreal, but that his usual & ordinary residence was at Argenteuil - where the process was served by leaving the same with a servant -

A distinction between Domicile & residence

1. Jousse. on Tit. 2 art. 3. Ordre 1667. — "Il ne faut pas confondre le domicile
1 Pigeau 133. nos (6) "avec la residence - on peut être resident
"dans un lieu sans y avoir son domicile - Ce
"domicile est le lieu ou l'on habite, et ou
"l'on a établi sa demeure ordinaire et
"permanente - Au lieu que la residence
"s'entend d'un lieu ou l'on fait une demeure
"passagere"

1. Lamoignon. p. 35. Hence - there can only be one domicil but there may be many places of residence

Distinctions with regard to service of process -

The Ordre of 1785 - says - "That the writ of
"Summons & declaration shall be served

or

"on the Defendant, personally, or left at
"his house with some grown person there,
"belonging to the family" —

Two modes of service of process are here pointed out — one — upon the Defend^t personally, the other at his house with some of his family — & by these words I understand his veritable domicile, as laid down by the law writers —

Fer Dic. V^o Domicile —
Rep. de Jur. — d^o
Deniz^t — d^o §. 1. s. 2. & §7. N^o 1.
Lacombe — d^o

Here the objection is taken, that the service in this Case is neither personal, nor left at the domicile, hence it is inferred, that it is no legal service — but we must look a little further into the law, and we shall find that service of process at the residence of a party is recognized —

By the Prov. St. 41. Geo. ch. 7. s. 5 — It is provided, that when the writ of Summons hath not been personally served upon the Defend^t — in case of Judg^t by default

ag^t

"ag^t him, he shall be entitled to the
"benefit of a re-hearing, upon his
"making it appear, that the place where
"the process had been served, was not his
"real domicile — or usual, or actual residence

Here then is recognized a mode of service
of process as sufficient, beyond what
is limited by the ord^e of 1785 — namely
at the usual or actual residence —

The next consideration is in what manner
is process to be served at the usual &
actual residence — Can it be done in
the same manner as at the real domicile
that is by leaving it with a person in
that residence — or one of the family — or
must it be personal service —

It is not necessary here to give any
opinion on the General question, it is sufficient to observe
that there are circumstances in
this particular case, which will make
the service of the Process, sufficient —
what are they —

1

1 ~~Residing~~ the Habitual residence of Depo ~~Landscab~~ at Argenteuil, for some years past

2 Living in his own house, wt. his Servants

3 Carrying on trade under his own personal management & direction —

4. holding local appointments — Capt. of Militia — Surveyor of roads —

Are there any marks of a real domicile, and if the clearest proof had not been made out that the real domicile was elsewhere, this would have been sufficient to have constituted it what does the law say, with regard to service of process at a residence such as this —

V. Denisart v° Domicile No 7. §1. "Nous croyons cependant qu'il — "suffit pour la validité de l'assignation "que le domicile veritable soit apparent "ainsi lorsqu'il y a toute apparence "qu'une personne est domiciliée dans "un

" un lieu, ou elle fait une residence
" habituelle, et ou elle est logée dans
" une maison qui lui appartient, ou
" qu'elle tient à loyer — l'assignation
" donnée à un pareil domicile sera
" valable, quoique peut être, on put
" juger qu'elle avoit son domicile
" dans un autre lieu" — Succession —
=

There is besides this further reason applicable to the present action — which is a demand by the Seignior aft. one of his Tenants or Censitaires for Seigneurial rights upon property held by the Defendt — within this Censive or Seigniory —

Pothier after laying down the general principle, that all every citation or ajournement, must be made to the person, or at his domicile — establishes some cases exceptions, to that

~~then~~ of exception to this rule, where process may be served at the simple residence, when there exists no domicile —

"Lorsqu'un vassal, en sa qualité
"de vassal, a une demande à intenter
"contre son Seigneur en sa qualité de
"Seigneur, l'ajournement peut être
"fait au lieu du Fief Dominant
"quand même le Seigr n'y auroit
"pas son domicile"

"Vice Versa — Quand un Seigr à
"une demande à intenter contre
"son vassal, il peut la former au
"lieu du Fief Servant, quoique
"le Vassal n'y ait point son
"domicile."

See also Principes des Regles Judiciaires ch. 29. p. 111 —

Servant for ways. —

Capt. of Militia. —

Overseer of roads

Platt
v.
Brooke

on admissibility & pertinency of facts & articles, — where touching the character and intentions of the party in matter of fraud. —

Lacombe — Vo — Interrogatoire sur faits & articles —

Ainsi la partie n'est point obligée de repondre à des faits & articles vagues non concluants ou calomnieux, et préjudiciables à sa reputation — la partie peut demander que tels faits soient rejettés —

Serpillon Tit. 10. art. 1. p. 107. No. 15

Par ces termes, "faits Pertinens", l'ordonnance a entendu parler des faits convenables, decens, & relatifs à la contestation — par conseguent s'il s'agissoit de faits famineux c'est à dire, injurieux ou captieux, — "continentes turpitudinem", la partie ne sera pas obligée de repondre sur pareils faits —

On n'est pas obligé dans d'autres cas que d'usure à repondre sur des faits criminis

"criminis causam annexam habentes"

Il faut que les faits ne soient pas vagues qu'ils tendent à la decision de la contestation et qu'ils ne soient point injurieux —

Bornier on same article. says —

Car si les faits sont impertinens, ne concernent point la Cause & la matiere dont est-question; calomnieux, ou Captieux & prejudiciables, ou qu'ils concernent le dol et la Conscience des parties — qu'ils aillent à decouvrir leur turpitude; alors elles ne sont point tenües de repondre, et la partie peut en demander la rejection

N.° 443

Vasseur
Catudal } Whether faits & articles can be admitted on an Inscription de faux ? —

N. Denizt. Vo Faits & art. §. 1. N.° 2

Les Interrogatoires sur faits & articles n'ont lieu qu'en matiere civile — En matiere Criminelle on ne communique aucuns faits à celui qu'on interroge —

C'est d'après ce principe que par arrêt du 25 Mai 1731, il a été rendu un arrêt sur délibéré en la Grande Chambre, à l'audience de 7 heures, par lequel la Cour a jugé, sans communication aux gens du Roi, qu'une Défenderesse à un faux Incident, décrété d'ajournement personnel, ne pouvoit faire interroger sur faits & articles la Demanderesse en faux —

Dans

Dans cette espece il s'agissoit de l'Inscription en faux formée contre le Registre d'un Marchand de Laon, qui de son coté demandoit des Condamnations sur le fondement des Reconnoissances et arretés portés sur son livre —

Le motif qui a determiné le Jugemt — a été sans doute, que depuis le decret, l'Inscription de faux etoit devenu un proces Criminel —

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2. Despeisses. Du Faux. p. 759. N° 29.

Lorsque l'instance du Faux, n'est qu'incidente à une instance Civile non seulement le Demandr en faux est reçu à prouver ses moyens de faux, mais aussi le Defendr est reçu à prouver ses soutenemens —

Charondas

Charondas en ses Observations Sous le mot Faux. — Mais lorsque l'instance de faux, ou accusation Criminelle est principale & seule, En ce Cas le seul Demandr en faux doit prouver ses moyens de faux, sans que le Defendr soit reçu à prouver le Contraire. —

Au premier Cas, on juge que c'est une instance Civile, et que l'incident Criminel, comme accessoire de l'instance Civile suit le principale — Et au second, l'accusation Criminelle se trouvant Seule, ne peut pas être accessoire. —

Longueuil
vs
Malbouf

on mo. to set aside Expon
under Tit. 18. art. 7 ord. 1667

See 1 Pigeau - 387 -

3e. Cas est lorsqu'une des parties est en possession de la chose reclamée - cette possession est, comme le titre, une presomption en faveur de celui qui l'a — ainsi, on lui laisse par provision cette possession, (a moins que des circonstances ne semblent solliciter le contraire; V. g. lorsque c'est une personne insolvable ou qui menace d'insolvabilité, par defaut d'economie ou autrement, ou enfin une personne qui degrade la chose) - c'est ce qu'on exprime par cette autre maxime - "la provision est "due à la possession."

Nouv. Denizt. Vo "Complainte" §. 4. No 3

D'autres fois il accorde la provision à l'une des parties — mais cette provision est fort differente de la Sentence de maintenuë - v

Rep.re V.e Jugemt.s p. 634

On distingue deux sortes de Jugemens les Interlocutoires & les Definitifs.

On peut encore distinguer à l'egard des Jugements definitifs ceux qui s'executent par provision, nonobstant l'appel, et ceux dont l'appel suspend l'execution —

Jousse on Tit. 17. art. 17 — note 3. p. 216. 217 —

Il n'est pas inutile d'examiner ici quels sont les differens Cas, ou les Juges peuvent ordonner par provision l'execution de leurs Sentences, outre celui ou les parties sont fondés en titre, et dont il est parlé en l'art. 15 ci-dessus — rendu this head in states —

Les oppositions et levées de scellés v.e — Les Sentences de Complainte et Reintegrande, quand elles sont rendues par des Juges Royaux. d —

Fer. Dic. v.e Execution provisoire de Sentences — est l'Execution d'une Sentence par provision, ordonnée nonobstant appel, et sans prejudice d'icelui. —

Marchande Publique

Emp° Une femme marchande publique, quoique pouvant s'obliger pour fait de son Commerce, ne peut cependant estre en Jugement sans l'assistance de son mari — Repv de Jur. Vo Jugemt. p. 632

Longuemil
Malbouf } N. Demiz. Vo Execution provisoire.
§. 3. N°. 1. —

Il paroit qu'anciennement dans la plus part des tribunaux Inferieurs, l'usage s'etoit introduit d'ordonner l'execution provisoire de presque toutes les Sentences, quoiqu'elles ne fussent point rendües dans les Cas designés par les Ordonnances. Dans plusieurs Tribunaux on inseroit dans toutes les Sentences qu'elles seroient executées nonobstant l'appel, comme si cette Clause eoit de Stile. — Ce fut pour reprimer ces abus, que la Cour par un arrêt de Reglemt. rendu le 7 Dec. 1689, sur la requisition de Mr Talon, a fait defenses à tous les Juges du Ressort d'ordonner l'execution provisoire de leurs sentences pendt. l'Appel, sinon dans les Cas portés par les Ordonces — Et à cet effet que lorsqu'on prononcera l'execution provisre d'une Sentce la clause & le motif en seront insérés dans le Jugt.

Galerneau & ux^r.
vs
Crotteau & al } action ag^t Defendants as Special bail for one Simon Evans — ag^t whom a Judg^t had been rendered in this Court on the 19^th day of April 1816 for £340 damages & Costs —

Plea. Nil deb. — Further that the Pliffs did not within the time — prescribed by Law sue out a Capias ad Sat: ag^t the said Simon Evans, by reason whereof the Pliffs have lost all recourse ag^t the Defend^ts as Sp. Bail — Further that these Defendants within the time prescribed by Law, to wit, on or about the 10^th day of May 1816, when a Ca. Sa. ought to have issued & to have been lodged w^th the Sheriff ag^t the said Simon Evans, he the said Simon Evans did, in — conformity to the bail entered into by the said Defend^ts & in their discharge, surrender

himself

nimself to the said Sheriff, but the said Sheriff could not detain the body of the said Simon Evans, as no writ of Ca. Sa. had been issued or delivered to the s^d Sheriff in this behalf—

Replication — Issue is issue on 1^st & 2^d pleas and demurs to the 3^d —

Recognizance of bail taken in open Court 1 June 1815—

Judg^t. of Simon Evans 19^th April 1816 for £300 — & Costs —

Ca: Sa: issued 27^th May 1816
delivd. to Sheriff 31 — do ——"—

Dubord
vve Eno -
Rivard

action negatoire, &
for cutting wood on the
Isle du Pas [illegible] agt the Pltff
as proprietor for 5/6 —

Plea — Not Guilty — 2. That Pltff as Seignoress is not entitled to the present action nor has she any right of property in the said Isle du Pas, & if she has, it is no other or greater right than that possessed by the other Tenants on the sd Island

That the part of the sd Island said to be owned by the Pltff, does not belong to her alone, but in common with all the other Inhabitants as a Common, who with the Defendt have always held and enjoyed the right to feed their cattle there and to cut down wood for their own use —

That if the Defendt ever cut down

down wood on the said Common he had a right so to do, he being possessed of nearly one half of the Isle aux Vaches &c. & depending on the s^d Isle Dupas, which he holds by right of Succession from his late Father who held the same & other lands under a Deed of Concession of the same with a right of Common on the said Isle Dupas, a right the said Defend^t has always enjoyed as well by himself as by his Forefathers for upwards of 30 & 40 years —

And further that the s^d Defend^t and all those having right in the said Common, have held used and enjoyed that right as attached to their respective Farms or lands, & were that right not attached to their s^d lands, yet from the length of time the Defend^t and

his

his predecessors have enjoyed the same, he hath acquired a prescriptive right thereto —

Replication joins issue on first plea — and takes issue

—

Longueuil
Malbouf

Journ. du Pal. 17. Et. 17.
p 215 — Not. 2 —

Pour que cette execution provisoire ait lieu, il faut qu'elle soit prononcée par la Sentence —

Les Juges, sur tout ceux de premiere instance, doivent avoir grande attention a ne pas ordonner l'execution provisoire de leurs Sentences, si ce n'est dans le cas ou il leur est permis par les reglemens de la faire —

Des Sentences sur complaintes. —

2 Couchot — Prac. Univ. 430 — En ce qui concerne la reintegrande il est certain que suivant les anciennes & nouvelles ordonnances les Sentences de Reintegrandes données par Juges Royaux, sont executoires nonob. l'appel, en donnant caution. —

Lespailleur
vs
Turgeon

action agt Curator for the matrimonial rights of the Plff w late Mr Frumentau

Stipulations of - propres to Pluff by Marriage Contract -

1. The moveables brt to her husband estimated at ——— 1000.—

2 Dower - sans retour ——— 1000

Preciput - all the moveables of the Community -
W. right to renounce to the said Community abandale the above advantages

3 Moveable property of the Community amounting (by Inventory & P. Verbal of Sale) to ——— 10,503.17

including therein 3962.19.— in money —

Reimbursement of Capital sum of 8000# rec'd by Frumentau —— 8000

moveables coming to Pluff from the Succession of her father & fell into the Community — 588.17

£987.3.11 —

The Defend. by his ans. rendered by him states that the pltff

1. Amount of effects purchased by pltff at Sale ——— 4221.16.6

2 Money found in house as stated in the Inventory ——— 980.3—

3 Money rec? from the Sheriff of Pavilion. ——— 1482.16

6684:15.6

1500

8184:15.6

Longueuil
"
Malbœuf

On Defendr's mo. to set aside a writ of possession on a Judgt. on action of complainte & reintegrande, because caution was not given before suing out same under Ordre 1667. Tit. 18. art. 7.

All Judgts., as well by the practice of this Court as under the Ordre of 1667, are either —

1 Interlocutory — or
2 Final — "definitifs" —

1. Interlocutory Judgts, are necessarily Provisional, "provisoire", because they direct something to be done, either with a view of forwarding the progress of the Cause, or giving a temporary relief during its continuance —

Of the 1st kind are all Judgt- orders proof, experts- or any other acte — "pour l'instruction de la procedure"

Of the 2d kind — are all Judgts grants a provisional allowance, whether of an alimentary nature or otherwise —

or

or of maintaining the party in the possession of the right claimed, or of the object in contest —

And these latter Interlocutory Judgts may be, upon giving Security, or otherwise according to the Circumstances of the case, respecting wch there is a variety of rules and directions —

But the present is a final Judgt — and the question is how or in what manner it ought to be carried into execution, whether by "provision" or otherwise —

Under the Ordre of 1667 according to the 17th & 18 Titles, we find that final Judgts, or "Jugemens definitifs" are of 2 kinds — and some of the law writers say — "on peut encore distinguer
" à l'egard des Jugements definitifs, ceux
" qui s'executent par provision —
" nonobstant l'appel — Et ceux dont
l'appel

"l'appel suspend l'execution"—

Thes Indg^t. "par provision," was intended to further the recourse of the party in whose favor it was given, as by means of security, caution, it gave to that party all the benefit of that Indg^t. in the face of an appeal—

The reason of the law in this respect may be learnt out of the Ordre of 1667, and the regulations made on this point—

The frequent use of appeals—and the various Jurisdictions to which these appeals would lie, proved injurious to the ends of Justice,—and it became necessary to grant a relief ag^t this inconvenience, by allowing that in certain cases—such as pointed out—by Ordr of 1667—Indg^t. should be executed notwithstanding the appeal.

on

on giving security -

This was found so effectual a remedy and so beneficial, that an evil of another kind arose out of it - for all the Judgts of the Inferior Courts in every case, were declared to be executory par provision" on giving security -

This gave rise to several arrets and regulations, and among others an arrêt of 7 Decr. 1689 - which states &c

and requires &c

So far this Judgt. does not come within the view or contemplation of the law, because, it does not direct that it shall be carried into effect par provision, nor any

2. Couchot. Pract. Universel. p. 430 —

Des Sentences sur complainte

" En ce qui concerne la reintegrande
» il est certain, que suivant les —
» anciennes et nouvelles Ordonnances
» les Sentences de Reintegrande
» données par Juges Royaux, sont
» executoires nonobstant l'appel, en
» donnant Caution" —

N° 235.

Sarclot
vs
Dugas

On contract by a Minor —

Rep^re de Jurisprud^ce V^e Mineurs p 579

Un mineur en Pais Coutumier, peut-il contracter, ou s'obliger, sans être assisté de son Tuteur ? —

Merlé 2^e part. p. 47 —

La loi 44 au Digeste de "Minoribus" etablit cette regle — Tout ce que font les mineurs de 25 ans n'est pas nul — il n'y a de nul que ce qui a été declaré tel en connoissance de Cause — Comme s'ils ont été trompés eux mêmes — s'ils ont perdu ou manqué à faire quelque profit qu'ils pouvoient faire, ou s'ils se sont obligés à quelques conditions onereuses. —

This is the Civil laws principle, & may be called the Common law principle in the "Pais Coutumier", upon certain maxims an established — [on same authority]

Dic. du Digeste. Vo Mineur. No 9. —

Il est restitué, s'il a acheté un fond à trop haut prix — Mais alors il rend le fond par lui acheté avec les fruits dont il a profité, et qui l'ont rendu plus riche: Et on lui rend le prix qu'il a payé avec les intérets que le Vendeur en a retiré, ou pû retirer" —

—

Despeisses - part. 1. Tit. 11. Des Restitutions No 27. p. 819.

Le mineur qui n'a pas été lésé ne peut pas être restitué —

Comme aussi un mineur voulant faire casser un Contrat qu'il avoit passé — par arrêt du parlemt. de Paris du 3 Mars 1629, fut-il debouté de sa demande, sur ce qu'il ne justifia pas d'avoir été lésé en la passation du dit Contrat — Henrys. liv. 4. quest. 1er —

Fer. Dic. Vo Mineurs —

No. 365

Mc Nider val.^t v.^s Hazar & Bangs val. App.^ts

On question of priviledge of a workman, a mason, for building a house on Defend.^ts ground —

Rep.^u – V.^o Maçonnerie – chef – Privilege sur le prix des batimens p. 67,

Le privilege des Entrepreneurs et ouvriers sur le prix des batimens qu'ils construisent ou retablissent est si equitable, si naturel, qu'il n'a jamais été revoqué en doute: Il n'y a eu de difficulté que sur les conditions et formalités préalables pour en assurer l'effet & pour prevenir les fraudes. – &c

N°235

Lanclot
Dugas

Litis pendens

Nouv. Pigeau. 1 Vol. p. 201. —

Lorsqu'une demande déjà pendante à un Tribunal est portée de nouveau à un autre, ou au même, il en resulte une fin de non-recevoir — Si cette demande est entre les mêmes parties — pour le même objet — et pour la même Cause. —

See more fully. p. 50 —

№ 416

Arnoldi } action for work & labor done
vs } as a Surgeon. — £95 —
Brown }
Cur. —

Plea — Non assumpsit —

Witnesses exam^d —

№ 1. Henry Munro — The charges in the Pltff^s acct. are the usual charges of medical men make of their patients. —

as to value of medicines — ^x^

№ 2 Henry Grasset — attended as Consulting Physician — Pltff attended as ordinary Physician — the medicines furnished were by joint opinion of Pltff & Deponent — the attendance — visits and consultations were at the repeated request of the said Fraser — the prices charged are reasonable —

№ 3 William Robertson — attended 12 or 14 times w^t Pltff — — Charges of Pltff. are usual & ordinary for persons of the class of Society to w^h the late Mr Fraser belonged —

№ 4 Mrs Gillis — The employ^t of Pltff, by Fraser, who was sick at her house —

has a Ken. that Pluff attended him sometimes twice sometimes 3 times a day during his illness sometimes From wch send for Pluff a 3d time. —

No 5 Martha Horsnell, wife of Benj: Clamp nearly same evidence with that of wm Gilles

No 6. Robert Nelson — Charges reasonable and usual

Defendts Wts

No 7 Geo. Selby — speaks to prices —

Vid. Arrets de Tromental. Vu Medecins.

Lorsque les parties d'apothicaires sont contestées, on doit les estimer par Experts; mais ces Experts ne doivent être des Apoticaires, on les juge suspects et parties intéressées, cette estimation doit etre faite par un medecin — Voy. l'Ordre 1667. Tit. des Descentes. art. 11. — Raviot Tom. 2. p. 62. q. 200. N. 14. — Mais les honoraires d'un medecin se doivent regler par un autre medecin — La raison de cette difference est marquée par ce même auteur. —

N. Denizart. V.o Chirurgien. N.o 11 a

Les Saignées du bras sont ordinairemt taxés au chatelet 15 Sols - et celles du pied 1.t 10 -. Quant aux grandes operations, comme mille circonstances peuvent les modifier, ou les rendre plus ou moins penibles, il n'y a pas de taxe certaine et lorsque les parties sont en difficulté sur leur prix, l'usage est, d'en faire faire l'estimation. -

Voyez Honoraires de Medecins - 4

N. Denizt. V.o Honoraires des avocats &c N.o 3.

4 Les visites des Medecins sont ordinairemt taxés au Chatelet de Paris à 40 Sols - Chacune -

Par arrêt du Conseil du 23 Janvier 1742, les Hon. des Medecins, dans les affaires qui s'instruisent aux frais du Roi, ont été fixés a 5. livres par Jour, pour les Voyages qu'ils sont obligés de faire - leur rapport est compris dans cette Somme. - Le même arrêt n'accorde que 50 Sous aux Medecins pour leurs visites, & leur rapport dans le lieu de leur residence

Franc. Jacques
Jn Bte. Jacques
vs
Fre Olivier Trembley
et
Opposant

On opposition afin de conserver

The moyens d'opposition state,

That by deed of Sale made & executed before Dubois, Not. & wits. on the 9th day of October 1811, the opposant sold to one Alexis Carmel Duplessis, an emplacement in the ~~seigniory~~ Seignior of Contrecoeur, in consideration amongst other things of the sum of 5000 livres, in payt. whereof the said Duplessis, created a certain annual rent in favor of the S. opposant of the sum of 240 to be paid yearly to the said opposant and to commence on 1 Oct. 1812

That on 30 June 1815, by act passed before Valle. Not., the said Duplessis and Marie Anne Trembley his wife, sold the S. Emplacement to Marie Gervais, wife of Jn Bte Gendron, by him thereunto specially authorised, for and in consideration of the sum of 7000 five thousand of which the said Marie Gervais was to keep in her hands à constitution de rente, in favor of the said opposant, on condition of her paying annually to the said opposant, the said rent of 240 in manner as above stated, and to continue the same until payt. and reimbursement of the

the Capital sum of 5000$ — for the payment of which rents the said Marie Gervaise specially bound and mortgaged all her Estate and in particular the lot of land of has been seized & sold by the Sheriff under the writ of Exon sued out in this Cause of the Lands and Tenements of the Defendr —

That by act passed before Maillous Notary Public &c. on 1 Feby 1816, the opposant ratified the said deed of sale of 30 June 1815, and accepted the said Marie Gervais, as Debtor of the said rents Constitute in the room & place of the said Desplessis, + whereby the said oppost became subrogated in all the rights of the said Duplessis held by the said act of 30 June 1815, and by reason thereof acquired a mortgage upon the aforesaid lot of land so seized & sold as aforesd, & has been specially mortgaged to the sd Duplessis by the said deed of 30 June 1815 —

+ to which act Marie Gervais & her husband were parties, consenting thereto.

That by act passed before the Sr. Maillous Notr. on 31 March 1817, the Sr. Opposant transfered

transferred, conveyed and made over to the children then alive or to be procreated of the marriage between the said Jean Bapt Gendron and the said Marie Gervais, the said Jn Bte Gendron accepting thereof, the said sum of 5000# – due by constitut as afsd with the arrears due thereon, and this in consideration of a sum of 4360#. qr – the said Jean Bte Gendron in the name and behalf of his children, promised and undertook to pay to the sd – Opposant in two payments, – ~~that~~ is to say, a sum of 2360# – in the month of June 1817, & 2000#. at St. Michel 1817 –

That the children of the said Jean Bte. Gendron in consequence of the transfer & conveyance made to them by the said acte of 30 March 1817, and of the subrogation therein contained, acquired a right of mortgage upon the aforesaid lot of land so sold by the Sheriff, and which had been specially mortgaged to the said oppost – as holding the rights of the said Duplessis by virtue of the said acts of 30 June 1815, and 1 Febry. 1816 –

That altho' the terms limited for the payt. of the said sums of 360^{tt} - be expired for a considerable time past, and before the sale of the said lot of land by the Sheriff, yet neither the said Jn Bte Gendron nor the any other person on behalf of his said Children have paid or satisfied to the said Oppost the said sum of 360^{tt} - nor any part thereof

The said lot of land having been seized and sold by the Sheriff, the said ~~Sheriff~~ Opposant is well found to exercise not only in his own right, the claims priviledge & mortgage which he had upon the said lot of land prior to the passing of the said act of 31 March 1817, which ought to be considered as void, and as if the same had never been made, inasmuchas the said Opposant hath not been paid the sum of money therein stipulated; but the said Opposant is also founded as Creditor of the Children of the said Jn Bte Gendron, to demand that he be subrogated in all the rights, priviledges

and

and Mortgages of the said Children in & upon the said lot of land, at the time of the Sale thereof by the said Sheriff, for the reimbursement of the said Capital sum of £360 —, and being so subrogated, that thereupon he may be ranked in the distribution of the monies arising from the sale of the said lot of land according to the priority of mortgage wh the said ~~Marie~~ Children had thereon, which — remounts to the 30 June 1815, as well as of the mortgage wh the said Opposant had before the passing of the said act of the 31 March 1817, and in consequence that he the said Oppt be paid the aforesaid sum of £360 wt interest & Costs —

Exception & plea — That the reasons of opposition are untrue & insufficient to support the claim of Oppt —

That the said Oppt never had any mortgage upon the lot of land in question he never having been the Creditor of the said Marie

Marie Gervais, whose obligation bore a mortgage, by the act of 30 June 1815 in favor only of the said Duplessis, but not in favor of the Oppt. who was no party to that act, and not vested with the rights of the said Duplessis in any manner — That the undertaking of the said Marie Gervais by the act of the 30 June 1815, was only to warrant the said Duplessis of all trouble on the part of the Creditors and proprietors of the said Rente Constituée, for the due payt. thereof, which obligation was a personal undertaking in favor of the said Duplessis only, who only could complain of any failure in the due performance thereof, but who could not transfer this right of warranty of the said Marie Gervais to any other person —

That the said Oppost. having by the act of 1 Feby. 1816, accepted the said Marie Gervais in the room and place of

the

the said Duplessis as the debtor of the said Rente Constituée, thereby released and discharged the said Duplessis, who can no longer be troubled by reason thereof

That by the Cession of the 31 March 1817 in favor of the Children of the said Jean Bte Gendron, they alone are the Creditors of the said Rente Constituée, & the Opport. has lost all right thereto —

That supposing even it were true, what the Opport. alledges, that he has not been paid the sum stipulated for the transfer of the said Rente Constituée, he cannot thereby consider the said act of Transfer as if it had never been made — Nor can the said Opport. demand to be subrogated in the rights of the Children of the said Jn Bte Gendron as their Creditor, inasmuchas they are not parties to the Suit, and who may have reasons to alledge that are not within the knowledge of the Pltff or Defendr —

That

That in order to obtain the said Subrogation it is also necessary, that the said Marie Gervais were made a party to the Suit, as she may allege payment & remboursement of the said Rente Constituée. -

That supposing even that the said Oppost. were vested with the rights of the said children of Jn Bte Gervais and also in the rights of the said Duplessis, yet the said Oppost. could not maintain his said Opposition until after discussion of the said Marie Gervais and the sale of the property upon which the said Rente Constituée was secured, + of the Oppost. pretends to have a claim upon the property of the said Marie Gervais at the time of the passing of the said act of 30 June 1815, being at most only Subsidiary

+ as the mortgage

Replication - Joins issue generally on the matters pleaded by Pltff -

№ 842.

Debartzch
vs
Roquer
& ux^r

action for Lods & Ventes —

The declaration stated, That on 27 May 1817, by act passed before Brunelle & his confrere, Notaries, the Defend^s sold to one Despins, a certain lot of land situated in the Seigniory of Debartzch being part of the Seigniory of S^t Hyacinthe the jouissance to commence on 29^e Sept^r then after, for and in consideration amongst other things of a sum of 8000^{ll} payable by diff^t instalments — by means whereof the said Despins became the true and lawful proprietor of the said lot of land and appurtenances —

That on 25^t July 1817, the S^r Defend^s, by act before the said S^r Brunelle & his confrere, acknowledged to have received of & from the said Despins, the full & entire payment of the price stipulated in & by the said deed of 27^{th} May 1817, and thereupon gave him a receipt & discharge for the same —

That on the same day, 25 July 1817, by another act executed before the same Notaries the said Despins & wife, sold to the S^r Defend^s [illegible] for and in consideration of the sum of 8000^{ll} — and also subject to pay all such Seigneurial

Seigneurial rights as might be due thereon,— which sum of 8000ᵗ. the said Després & wife acknow. to have at the time had and received from the said Defendᵗ—

That by means of this last-purchase the said Defendants became again the proprietors of the said lot of land, and are now in the possession thereof, and thereby bound personally & hypothᵗ towards the pltff for the payᵗ. of all the Seigneurial dues thereon —

That in & by the said deed of Sale of the 25 July 1817, it was falsely stated, that it was in consideration of the sum of 8000ᵗ. That by the sᵈ Defendᵗ— made the purchase of the sᵈ. lot of land, and this with a view to cheat the pltff of his rights as Seignior, upon that purchase when in fact the Pᵈ. last-sale was also made in consideration of a sum of 8000ᵗ

The price of the first sale

That by the Sale made by the Pᵈ. Defendᵗ to the said Després on 25 Mai 1817, there became due to the pltff for Lods & Ventes a sum of £27. 15. 6½ and by the sale made by the said Després & wife to the sᵈ Defendᵗ—, there became due to the Pltff another sum of £29. 10. 4, making together £57. 5. 10½, qᵗ. the Defendᵗ— as proprietors of the Pᵈ. lot of land are bound to pay to Pltff

Plea – General denegation of law & fact stated in declaration –

Further, that the lot of land ment.d and described in the several deeds of 24th May & 25th July 1817. is one & the same lot, and that before the passing of the said last ment.d deed of 25 July 1817, the Defendts had not received tradition or livery of seisin, of the s.d lot of land, nor in any manner become possessed thereof – and because the said deed secondly above ment.d, is to be considered as being – intended to operate, and as having had only the effect of operating the anulment of the said deed first above ment.d – and because no mutation, or mutations, has or have been, or was or were operated by means of the said deeds by reason whereof the Lods & Ventes in and by the s.d Declaration demanded could accrue or become due by or from the said Defendts to the s.d Pltff –

Replication – Joins issue – alledges that by virtue of the first deed of Sale there was sufficient tradition of the property to entitle the Pltff to his Lods & Ventes thereon – That

that the deed last made must be considered as a separate Sale and conveyance of the property, not merely as annulling the first deed —

—

The deed of Sale of the 24th May 1817 is in the usual form, and for and in consideration of a sum of 8000th — it being stipulated that the purchasers should enter on the enjoyt. of the property at next St Michel "à commencer la jouissance à la St. Michel prochaine" — On this deed there appears a receipt for the purchase money from the purchaser Després, which is dated on 25th July 1817 — and on same day another deed of Sale is made by Després & wife to the Defendants of the same lot of land, for and in consideration of the sum of 8000th said to be paid at the time in the presence of the notaries, by the Defendts to the said Després wife — There is nothing out of the usual form in this deed except a few words stating that the Vendors had never

been

been in the possession of the property,
(les vendeurs n'ayant eu aucune jouissance)

If there was no actual tradition could there have been any sale — that is such a Sale as transfered the property to the Purchaser —

See Cod. Vente. № 318 - 319 - 320 — by which it would appear that the Sale was not complete —

The Cases put & authorities shewn refer to instances where the intention of the parties was to give immediate effect to the Sale by conveying to the Vendee all the right of property & the immediate possession of the Vendor — & when the mere consent of the parties evidenced by the expression of the deed was considered as tantamount to the tradition réelle required — or as being the tradition feinte, effect had the same effect, but here, it is expressly ord. that the deed should not take effect till 29 Sept. after the passing thereof — and the Vendor instead

See

y

№667

De Longueuil
v.
Trichette

action de complainte —

The declaration states that the Pltff is Seigneur of the Barony of Longueuil, & for several years last past hath been in the possession and enjoyment thereof and of the right of bannalité and of the bannalité of all grist mills within the said Seigniory & the toll arising therefrom to the exclusion of all other persons whomsoever — That by deed of sale bearing date 14th. March 1812, the Defndt. purchased of & from one Toussaint Tougas this wife, a certain piece or lot of land or emplacement, held en roture within the said barony of Longueuil, making part of a land granted by Jos. Fleury Deschambault in the name and as Tutor of the sd Pltff to one Jacques Renaud, by deed of concession bearing date the 10th. Augt. 1763, and subject to the charge — "Sujet au moulin de ladite "Baronie de Longueuil, à faire confiscation "des grains, et d'amende arbitraire." —

That the Defndt after purchasing the said emplacement, and with a view to disturb and molest the Pltff in the injoyment

and

and possession of the said right of
bannalité, on the 30th. Dec. 1815, unlawfully
and injustly did erect, build, & construct
on the said implacement a certain wind-
mill with all the necessary machinery &
apparatus fit for grinding wheat into flour
and all sorts of grain, and in which said
windmill the said Defendt. hath daily and
every day ground and made into flour for
divers persons as well of the P. barony
as others, constituents,
large quantities of wheat, and taken and
received the toll thereof, & hath in other
respects molested the Pltff in the enjoymt.
of her P. right of bannalité, to her damage
£1000 — Concludes - that she may be
maintained in the quiet & peaceable enjoyt
of the P. right of bannalité — that the P.
Defendt. be adjudged to demolish his P. mill
and on default of his so doing that the
P. Pltff be permitted & authorised so to do
at the cost & charge of the Defendt. — That
the P. Defendt. be held & adjudged not to grind
any wheat in future in the P. mill, and
not to molest the Pltff in the injoyt. of her said
right of bannalité —

injoined

Plea — 1, General denegation of law & fact — alledged in the declaration —

2. Not Guilty —

3. That by the laws in force in this Province all Seignors are bound to keep in good order and repair the bannal mills necessary for the wants of their tenants, and on default — thereof, it is allowed to every individual to build and erect such mills, ~~and in that case they~~ ~~they~~ acquire the right of banalité. — That in the whole extent of the said Barony of Longueuil which consists of 2 Concessions — one of two leagues in front by 3½ in depth, & the other of three leagues in front immediately in the rear of the former & extending to the River Chambly, there are only three water mills which can be considered as bannal Mills, that is to say, one on the Island of St Helens on the first concession — and two on the little River Montreal in the second concession of the said Seigniory, one in the parish of Chambly and the other in the parish of Blainfindie —

That

That these mills have at all times been insufficient to grind the grain necessary for the subsistence of the Inhabitants within the said barony, the Defendt alledging and is ready to prove, that none of the said Mills can grind any grain between the months of November & April while the River Chambly is frozen, and that the said Mills grind only a part of the Spring and fall, while the water is high, being in all between 2 & 3 months in the year — and the said Defendt. further alledges that at all times and Seasons of the year, the Tenants of the said Barony are under the necessity of carrying their wheat elsewhere than to the said bannal Mills to have the same ground for their subsistence —

That the said Mills being insufficient to grind the wheat necessary for the subsistence of the Tenants of the said Barony, and the said Mills, not being considered as bannal Mills, the Defendt and every individual in the said Barony had a right to build one or more mills within the said barony, and by doing so, the right

of

of bannalité became attached to such Mills

That the said Defendt for the reasons aforesd having acquired the right to build one or more mills in the Sr Barony, did in the months of July 1815, that is to say, more than a year before the commencement of the present action, build and erect, a certain wind mill upon the emplacement in question, which mill began to grind and to make flour in the months of January 1816, and has since continued so to do during all seasons of the year, to the great advantage & benefit of all the tenants on the said Seigneury, which sd Mill is in good order and sufficient to grind all the grain which is brought to it —

That the said Defendt having thus built and erected such Mill is entitled to claim and demand that the right of bannalité be attached thereto, and that all persons and more especially the Pltff be enjoined not to trouble or molest the said Defendt in the enjoyment of the said right of bannalité, and that action be dismissed —

The Replication joins issue and demurs to the matters of law pleaded by the Defendt ——

No 136

Laguenx et al.
v
Ballingall

action of assumpsit — on an undertaking in writing, of which the following is a copy —

Due to Messrs Laguenx & Grant, the sum of two hundred pounds currency in part payt of the Brig Adonia for freightage of naval Stores — Given under my hand at His Majesty's Navy office at Montreal, this 22d Novr 1816 — J. Ballingall

Plea — non assumpt — Further that the defendt signed the acknowledgment & undertakingment in deltr through error and without any legal consideration, and that the same was obtained from the Dfpt by false fraudulent and illegal pretexts. —

That the plffs are not intitled to the sum of £200 for the freight of the brig Adonia, as brig is only of the burthen of 142 3/4 Tons and was freightred in novembr last (1816) at Quebec with Naval Stores, and that the said Defendt promised to pay Two Shillings for each and every ton the brig should transport to Montreal

which freight amounted to the sum of £71. 7. 6, and which freight he paid to the said Plff —

Replication — Joins issue —

Witnesses for Defdt

No. 1 James Millar, Clk in deputy naval Store Keeper's Office, — Plff. produced ant. for freight now exhibited — costs charge for demurrage — That Defdt. undertook to pay the freight, but objected to the demurrage as exhorbitant — That thereupon the plff said that they had rec'd pay't. for demurrage at the rate charged, which was the usual rate for such a Vessel as the Brig Adonia at the port of Montreal, and further added, that they could get two respectable Merchants, acquainted with such matters to certify the reasonableness of the said charge for demurrage — whereupon Defdt — told plff, if what they alledged was true he would pay the said demurrage — and added, that as he the Defdt was a Stranger in the Country they must produce to him the evidence they alledged — That Plff went away & ret'd soon after with the signatures of Stephen Roi, & N. Mercier

to

to the said amount, whom Plff. averred were respectable Merchants and acquainted with such matters as the freight and demurrage of vessels at the port of Montreal, upon which representation the Defendt pd to the Plff Laguerre £71. 7. 6 for the freight — and at same time gave him £6. 2. 3 in Cash and the note or acknowledgment filed in this Cause by Plff for £200 - for demurrage, telling the Plff at the time, that he Defendt gave the sum under the idea and impression, that what the said plff asserted was true, and the charge correct and reasonable — That upon enquiry had afterwards, this charge for demurrage was found to be exhorbitant (Jasper Taylor) — That some of the Merchants, had refused to sign the Certificate in question, as being exhorbitant, and that 6 was a reasonable charge. Defendt also found that the persons who had signed the said Certificate were not Merchants acquainted with such matters — That Defendt offered to pay at rate of 6 p day for demurrage of pd Vessel — pd. Plff refused —

No 2 Stephen Roi — Shop-keeper in Montreal, Is not in the habit of trading wt Vessels, never [illegible] on

one, nor owned one, nor paid for any freight on the River St Laurence - never paid demurrage, nor does he know upon what footing demurrage is paid at the port of Montreal - nor does he know or recollect any one instance where demurrage was paid at the port of Montreal. He signed the certificate now shewn - but does not recollect having done so, nor under what circumstances, nor at whose instance it was done.

No 3 James Leslie - Merch[t] - part owner of a River vessel - has kind such - never knew it was customary to pay demurrage - usual freight is 10/ ₰ ton - That from 14 to 18 days is the average time of a Voyage from Quebec to Montreal - 5/ such demurrage was allowed - thinks 6[d] ₰ ton w[d] be sufficient, never an extravagant sum - Refused to sign a certificate for demurrage last fall -

No 4. Nic. Menelier - Qu'il n'a jamais eu occasion de payer demurrage de batiment au Port de Montreal ni ailleurs, & ne peut dire le pied sur lequel il se regle - Qu'il a signé le certifat à lui montré pour la Demand-, qui le pria de le faire en lui disant qu'il avoit une Convention avec le Gouvern[t] pour le paiement du retardement de son Brig, & qu'il lui falloit deux Signatures pour se faire payer, & en consequence il a signé -

№ 5 Jasper Tough — merch.t acquainted with the River craft-transport between Quebec & Montreal. is part owner of a Small Vessel in that trade, & has frequently paid & rec.d pay.t for the transport of goods between the said two places —

That it is not usual to pay demurrage at the port of Montreal — thinks that 6.d ₰ day would be an extravagant sum, if any were allowed — Last fall he rec.d £5 — for the demurrage of a large Schooner for 10 days at Montreal — Refused to sign a certificate that 1/3 ₰ day was a reasonable allowance — Has loaded & discharged as many Vessels as any person in the trade for these last ten Years — that many of these vessels have been detained for 8 or 10 days, without any demand being made for Demurrage —

Defend.r Wit.s

№ 6 Jean Boudreau — Capt.r Defoy. rec.d £6 ₰ day last year from Govt. for the demurrage of his Vessel q.r is under 100 Tons — and 3 or 4 Capt.s of Craft were p.d at same rate — Thinks the demurrage demanded by Pltff. reasonable —

№ 7 Jos. Arcan — Rec.d £4 ₰ Day for demurrage on his Vessel of 68 Tons — Two other Capt.s were p.d for dem. at same time — Thinks demurrage demanded by Pltff. reasonable —

№ 8 Franc. Côte — rec. 6 ℔ days for demurrage on his Vessel for 18 days from Departure last full — took 6 days rather than go to Law, as he had previously agreed wt. Dept. for 1/3 3/4 Thinks sum demanded by Ships. reasonable —

№ 9 Wm. Fisher, Capt. of Ship Kilsiewood — No demurrage allowed without express agreemt —

22 days demurrage on Adonia of 142 3/4 Tons —

№ 346

Raymond
Ballingall } action of assumpsit for demurrage of Plff's Vessel

The declaration states, that the Vessel was of Tonnage of 92 Tons, & that Defr agreed to pay Plff at rate of 1/3 ¾ p day for 29 days — making £175 —

There are Defr Counts in Debin — of — a quantum meruit — &c —

Plea — Non assumpt — & Tender £66. 12

№ 518.

Hammond
vs
Wilson. } Special assumpsit &c — for work as a Carpenter —

1st Count in declar.n is for a special contract for completing the Carpenter Work of a house in consideration of a Sum of £125. —

2d. Count — for £255 „ 14. 7 for work & labor &c —

3d. Count for £255. 14. 7 for quant. mer.t — acknowledges to have rec.d on acct £55. 1. 3. and concludes to pay.t of bal.ce of £202. 12. 4.

Plea — Non-assumps.t & Incid.t demand for £200 — for materials found, & board & lodging of workmen —

The first Count in the declaration was rejected as there was no conclusion to support it. —

Wit.s exam.d

№ 1 Jos. Ray — proves work done by Pluff as stated in acct exhib. № 2. amounts to £233. 14. —

№ 2. Ebenezer. W. Buchanan — Pluff made complete Carpenter & Joiner work of the house — did beside several

several extra Jobs – & all the work cont. in exhibit
№ 2 – & charges therein are reasonable –
Did other work not included in exhib. № 2
200 feet partition boards, worth 1/ ₰ foot £10 –
4 extra doors — — — 4
4500 Shingles — — — — 2.5

X

Boarded & lodged at Defts house for 4 months at rate of 20/ ₰ month –

—

№ 3 James Fullington. – House finished by Pltff plan altered – 9 occasioned diff. work and a greater expense – the extra work done by Pltff was –

a Jobt of partitions –
8 additional dormant Windows 23/ ea.
built & covered a gallery – £6 —
2 Gable windows – 15/ ea. 1.10
2 flights of stairs – £7 —
Clapboarded 2 Chimnies – from top to bottom – £3 –
2 additional trimmers made £1 —
a Jobt partition boards – 2000 feet at 10/ ₰ 100 feet –
some extra doors 20/ each –

No. 4. Darius Bent – speaks to work done by Pltff, as contained in exhib. No. 2. –

Defend. W.

No. 5 Henry Morgan. That Pltff promised Defd to pay him for board & lodging of his workmen, when were 5 of them –

No. 6 Mary Evans. lived in Defend serven yrs 1816 Five of Pltff men boarded w Defd – greater part of summer – at 20/ p week – heard Pltff say, that he was to pay for the board

Ex obj: raised to evidence –

No. 7 William Taylor.

Deschambault & Thibau — } House Rent —

Witnesses

No. 1. Frans Beaulieu — rent 10 to 12 —

2 Fercol ~~Guillon~~ — Dion — loyer 5 piastres pendant le tems que le pignon se demolissait

3 Jos. Thibaut — entre 11. a 12

4 Pre Renois ——— 12 — l'a offert —

5 Magne Eli — 6 piastres —

6 Jn Bte Girard — no oppos.n to the demolishs the pignon — this contradicted
7 a 8 piastres —

7 Marie An. Legris — rented 2 rooms for 10/ a month & she afterwards refused —

8 Agathe Billet, rented a room 30/ p month left it — under apprehension that pignon was to be broken

9 Daniel Sullivan — left house —

10 John Porteous

11 Jos: Lavallé —

Bouthillier
vs
Cuvillier
val

} action en Revendication

Witnesses for Pltff

objecn 1. Jonah Thomas.

150. 5. 10
62. 8. 1
56 —
2. 10 —
271. 3. 11
30. 2.

No. 133.

Lo. Chaput
Jos: Marteau } action on promissory note for 400 ℔. & Six bushels wheat

See Interrogatories & answers of Defendt—

Dom: Rex
Cuthbert— } on Certiorari—

See. 6 T. Rep. 330

№ 584

Dufresne
&
Ant. Legault
&
Franc. Lariviere
Oppt.
and also
Franc. Tarte &
Lariviere Oppt.

The Defend. having obtained Judgt. as the Pltff. in cost sued out execution thereon, and seized the Pltff's effects — an opposition was made by James Stuart, Esq. who was the Attg of the Pltff. in the name and behalf of Franc. Lariviere of the parish of St Laurent, Yeoman, claiming the effects seized as his property — This opposition was dismissed, and an execution sued out by the Defend. agt. the said Franc. Lariviere for the Costs — Upon the seizure being made, Mr. Vizé, in the name and behalf of Franc. Tarte dit Lariviere, habitant de la paroisse de St. Laurent — praying that the said seizure should be set aside, as he had never made such an Opposition as that of had been made in his name, nor authorised any one to make it for him, nor had he ever any contest with any of the parties in the Cause —

In the moyens d'opposition, the said Franc Tarte Dr. Larivière states —

1st — That he ~~is not~~ the opposant is not, and cannot be the same person ~~mentioned~~ named as the opposant on the Execution issued out at the instance of Defendt. at Pliff —

2. That supposing the said Franc Larivière to be the same person, yet he denies having ever made the opposition in question — and disavows the act of every person whatever who may have acted for him or in his name in this behalf, and particularly of James Stuart, in case it should be pretended that he used the name of the said Franc Tarte as opposant, he hereby declaring that he never formed such oppos.n —

Sur Demarquet. Style du Chatelet — en lieu of Desaveu —

Drean vs Munn } action for 872 dlls on a note dated at New York 10 Feby 1816 —

Young & al vs Wright — } 1 Camps. N. P. Rep. — 139

In an action by the Indorsee of a Bill of Exchange, if the declaration states the Indorsement to have been made <u>before</u> the Bill became due, and it appears in evidence to have been made after the bill was due, this is not a material variance.

2 Camps. 307. — Coxon vs Lyon } York, Lent Assizes 1810. Cor. Thompson B —

Action agt the Drawer of a Bill of Exchange. — The first Count of the declaration stated, that the Defendt on the 3d day of Feb. 1810 at &c, according to the usage and custom of Merchants, made his certain Bill of Exchange in writing, his own proper hand &c, and then and there directed the said Bill of Exchange to one W. H. by which said Bill of Exchange Defendt then and there requested the said W. H. to pay

to Pltff on 1 Augt. 1810 the sum of £400

The bill being produced, appeared to be dated 6th Febv. 1810

See cases contra —

But in a Case before L. Ellenborough at the Sittings after M. T. 1809, where the declaration alledged that the Defendt. &c. made his certain Note Bill of Exchange in writing, bearing date the same day & year aforesd., and the real date of the Bill was different; His Lp held the variance to be fatal and non-suited the Pltff.

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Chitty – Bills 365.

A Promissory note should in general be stated in the declaration as it was really made — and if there be a variance it will be fatal See cases referred to Gordon v Austen, 4 T. Rep. 211. –

Hodgson
v
Park

On Promissory Note — Plea — No Value

Evans on Bills & Notes —
p. 152 —

As between the immediate parties
to the Bill, consideration is presumed,
and it is incumbent upon the person
who alledges the want of it, to
substantiate that allegation by
legal proof —

Fell on Guarantie — p. 4 —
No 8 — For the benefit of trade, Bills
of Exchange & promissory notes are —
excepted out of this Rule of consideration
and in some respects put upon the
same footing with deeds & the Specialties
9. As for instance. — In an action upon
a bill or note, no consideration need
be proved. — But if there be really
a want of consideration in the giving
or transferring them, they may be —
impeached by evidence of such want
of consideration —

10 —

2 Evans' Pothier p. 25.

The Case of Bills of Exchange and promissory notes affords in some degree an exception to the general rule which has been under discussion. — When they are indorsed over for a valuable consideration the want of consideration between the original parties is immaterial — as between the immediate parties a consideration is presumed, but if the contrary is shewn, it is a sufficient defence —

Debartzch v Roquier &c. contd from ⊖

of transferring the right of possessn to the Vendee, or holding it for him or in his name, expressly retains it for himself — and when the new deed of sale is made it is again acknowledged that the Vendee never had possession —

Again it is a question how far the consent of the parties by executing the deed in question in the manner they have done by the paying the price of the land on the first Deed & then making a new Sale, is not tantamount to a tradition — or at least shewing an intention of the parties to wave all objections to this formal act of a tradition — and in such case how

how on the night after Sept. was to be considered as assisted or aided thereby and it really seems that the parties instead of endeavouring to evade the payment of double Duty & Penalty, took the most effectual means to give the Surveyor his right thereto, if we consider the circumstances of the Case

Allen
v.
Forrest
&
Boire
v.
Forrest
&
Laberge
oppt.

on Privilege of Landlord for furniture &c for rent, after sale by Exon —

See Path. cont. Louage. No 229
Do ——— 265.

Dreem
vs
Munn

Case—

On the 29th March 1815, one Brown drew a bill of Exchange at Montreal on Messrs Drummonds Bankers, London, in favor of Henry Dreem (Pltff) or ordr. for £150 Stg. payable at 20 days sight— This bill was indorsed by the Defendt Munn.— The bill was protested for non-acceptce and on 10th Octr 1815, was protested for non payment.— This bill had been indorsed by the pltff to one Stuart Mollan at New York who transmitted the bill to England & to whom it was afterwards returned undr protest— The parties pltff & Defendt being at New York when the bill was returned, a Suit was commenced ~~by~~ in the name of Mollan agt Munn for the amount of the bill & damages, which by the laws of New York are 20 ℔ Cent— This the Defendt had refused to pay, considering himself liable only to the damages of the place where the bill was drawn, namely 10 ℔ Cent—

Upon the Defendt having been arrested he agreed after some discussion to give the present promissory note to ~~the Plff~~ in consequence of which he was liberated. The defence to the present action was, that the Defendt was in duress at the time he made the note - that he received no consideration for the same from ~~the Plff~~ - and that the note declared on and that offered in evidence was different and ought not to be received - The Defendt failed upon the first point, the Court holding that the Defendt although under arrest at the time had the means of contesting the demand made upon him and he considered it illegal - On the 2d point the Court held that the plea of want of consideration, was ill founded, even in regard of the 20 p Cent damages, to which the Court held the Defendt was liable by the laws of the State where the bill had been negotiated - as to the variance it was considered not founded -

The note dated ~~Feby~~ 10th Feby 1816, and so stated in the declaration — The indorsement to Pluff is on 10 March 1816, but stated in the declaration to be on 20th May 1816 —

Kyd on Bills - 191 - As a bill may be negotiated at any time after it issues, it is immaterial on what day the indorsment is stated to have been made — but if it be stated to have been made before the time the bill or note became due, an indorsement afterwards will probably be considered as a Variance —

4 Maul. & Sel. 505 —

Where the Indorsee declared of the maker of a Promissory note, that he made the same payable at the house of Messrs B. & Co. London, and upon production of the note at the trial, it appeared that the address "at the House of Messrs B. & Co.", was not a part of the note, but only a memorandum at the foot of the note — Held that there was a Variance —

Whitcombe
vs
Curtis — } Qud. as to correcting the Title to the Judgt ent. on

Tomlin's Law Dic. Vo Amendment.

The correction of an error committed in any process which may be amended after Judgt — and if there be any error in giving the Judgt the party is driven to his Writ of Error though when the fault appears to be in the clerk who writ the record, it may be — amended —

and

By St. 14 Ed. 3. c. 6. no process shall be annulled or discontinued by the misprision of the Clerk in mistaking in writing one one Sylable or one letter too much, or too little — but it shall be amended —

and to enlarge the authority of the Courts — the St. 8 H. 6. c. 12. gives power to amend what they shall think in their discretion to be the misprision of their clerks in any Record, process & plea, warrant of attorney writ, pannel or return —

Gilb. H. C. P. 110.

4. Maule & Sel. 94.— Usher & al. vs Dansey & al.—

When a Verdict was given for a sum exceeding the damages in the Declaration, and Judgt entered for the same, and writ of Error upon the Judgt— assigning that for cause of Error, The Court allowed the Pltff to amend the Judgt— and transcript— in a Term subsequent to that in which the Judgt— was signed, by entering a Remittitur for the excess.—

Hutchison
Lister & Taylor & Co } action of assumpsit

1. Count in Debt for £1342. 8. 2 for goods sold & delivered

2° d° Quant. Mer. for same goods

3° d° Insim. Comps.

Plea. Non-assumpt & and for Special matter, states, That the goods were purchased by Defendts as Agents of one Henry Wilcox, and were paid for to the Pltff by two promissory notes, made by the said H. Wilcox payable to the Defendts & by them indorsed to the said Pltff, and which notes the said Pltff received in payt of the said goods

2. Payment

Replication joins issue.

It appeared in evidence that the goods were sold by the Pltff to the Defend.ts on their own personal credit & not on credit of Wilcox – that after the sale & delivery, the Defend.ts delivd to Pltff two notes, drawn by Henry Wilcox ^on their favour & at. they & indorsed ~~by Defts~~ to Pltff – one payable in 4 & the other in 6 months for the amt. of the goods and in consequence of which the Pltff gave the followg receipt to Defend.ts –

who appd to have acted only as the agent of the Defend.ts =

Messrs Lester Taylor & Co
for Mr Wilcocks
Dr. to Wm Hutchison

1817
Oct 28. To Goods ₱ Invoice delivd £1342. 8. 2

Recd. the amt. by two Notes indorsed by Messrs Lester Taylor & Co at 4 & 6 months.
for Wm Hutchison
Robert Coleman

In this case the Defend. moved to reject two papers produced by Mr. Wm Coleman on his examination —

see case cited by Pluff 6 J. Rep. 52 — see also 4 East. 147. Mussen. V. Price

Where goods were sold upon a contract that the Vendee was to pay for them, in 3 months, by a bill of 2 months. — Held that the Contract was for a credit of 5 months, and therefore that assumpsit for goods sold and delivered could not be brought at the end of 3 months, upon the neglect of the Vendee to give his bill at two months — the Remedy being by an action for damages for the breach of the Contract in not giving the bill —

But where action is brot. after expiration of delay, it may be by assumpsit — see Chambre's opinion id. p. 150. —

See also - 3. Bos. & Pull. 582. Dutton
vs Solomonson. -

If goods be bought to be paid for by a bill at two months, and the Vendor accordingly draw upon the Vendee for for the value who refuses to accept -
Semb. - that the Vendee cannot be sued in an action for goods Sold and delivered, but upon the Special Contract only - But certainly he cannot be sued in that form of action till after the expiration of two months. -

1 New Rep. 330. - Brookeval. v. White

If goods be sold at two months credit, to be paid for by a bill at 12 months, and the goods be not paid for after the expiration of the 14 months, the Vendor may recover in an action for goods sold and delivered. -

Non-Suit

Heath. J. I have always understood that when a Contract is executory, the party

party must declare specially, but that when it is executed, he may declare generally — refers to case in Wilson 1 Wil. 115 —

Chambre. J. The qualifications respecting the mode of payment are introduced for the benefit of the purchaser, and during the time to which they relate, the Seller must sue on a Special Contract — when that time is expired the money is absolutely due — No authority in point has been cited for the Defendt and if any thing dropped from L^d Alvanley upon the Subject, it was extrajudicial — refers to case of Dutton v Solomonson —

=

In this case process was sued out and served on the 30th March 1818 — The transaction appears to have taken place on the 28th Oct. 1817, and the note produced by

Bayley. — 166. note given for a Debt, must be accounted for before the debt can be recovered

by the Wm Coleman, is dated on that day — payable in 4 months — the Wm proves that there was another note for the other half of the debt given payable in 6 months — The note due at exp. of 4 months was protested for non-payt — on 4 March 1818 — Party notified to Defdt —

Facts Laches —

may be insisted in case of usury —

Poth. Usur. p. 748 — No 85.
Dr Oblgs — No 799 —

French — Conant { 1st Ground — see 1 Tidd. p. 156. 7. — as to title of the Cause —

2d ground. 8 T. Rep. 338. — as to cause of action — must be if a debt is sworn to —

3d ground. This no essential part of oath — all the essentials have been sworn to —

Galerneau
~
Crotteau
&c =

action on Bail after return of Non est Invent — on Ca. Sa.

On Surrender of Debtor — notice ought to be given to the pltff —

1 Tidd. 240. 241 —

Prat. Forms. 103 —

1 Sellon Prac. 165 —

No 784

Raymond Beauvoun
Curateur &c
vs
Int Bx Countermanche
& ux.

} Action en Rescision
&c

The action is brought by the plff, in his Capacity of Curator to one Marie Joselte Guertin to set aside & annull a certain deed of Donation made by her to the Defendants on 14 March 1814

The declaration charges several acts of fraud on the Defendrs namely that they entised away the Sr Guertin from her relations and to live w. Defendrs & while in their power & under their influence prevailed upon to execute the deed in question, in a secret manner without the knowledge of her relations or friends — whereas at the time the said Guertin was insane, lunatic and non compos mentis & altogether incapable of making the said deed & so remained until 12 July 1815, when she was interdicted — The Plff also allegs

a

a want of consideration in the s^d deed but equal to the value of the property given—

The Plea, denies Facts alleged in the declaration — that the Interdiction in question was volontaire without any enquete as to the state of mind of s^d Guertin

Witnesses

No 1 Wolfred Nelson, Surgeon, was called to attend M. L. Guertin in a/s. 1813 — Was laboring under mental derangement — found her in a state of idiocy — finding his treatment had no effect he discont. his attendce — Is of opinion that her disorder arose from a constitutional defect, q^e in that case generally continues during life

No. 2. Louis Bluteau — Connû com. M. L. Guertin depuis une dizaine d'années — quelquefois elle lui parloit bien tristement — vat-dire, que son discours n'avoit point de bon Sens — de la il l'a crû foible d'esprit — Fait — venu à la maison a monté dessus pour appeller le diable ce qui l'avoit empeché de dormir — cela etoit avant la Donation — l'automne avant — l'a vû souvent chez son frere lui a paru avoir l'esprit egaré — il y avoit des momens qu'elle avoit

avoit son bon sens — 2eu dans les occasions ou elle paroissoit avoir l'esprit egaré, elle n'etoit point malade de Corps 2eu les Defend.rs dem.s dans la meme paroisse d'avoient occasion de bien connoitre le caractere de lad.e Guerin — 2eu'il l'a entendu appeller la folle Guerin — voila la folle Guerin qui passe —

2eu dans le tems qu'elle a été interdite elle disoit qu'elle alloit à l'Ecole —

No. 3. Antoine Renaud — a été voisin de Pre Guerin ou dem.s lad.e Guerin — elle venoit souvent chez lui — elle passoit alors pour folle — une fois elle est venu dire que son frere le pouss avoit a coup de couteau ce qui n'etoit pas vrai, mais son esprit egaré lui faisoit croire cela — elle est sortie un fois criant que le feu etoit à la maison — elle passoit dans le voisinage pour avoir l'esprit egaré — hors d'etat de gerer ses affaires — les Def.s demeurent à St Denis a été à meme de connoitre son caractere —

No. 4 Pre Laroix — Commune Renommée elle passoit pour folle — n'en a jamais

entendu parler autrement — on disoit voila la folle Quentin qui passe —

No. 5 Pierre Paquet — Ladte Quentin a demeuré chez son frere jusqu'à ce qu'elle se soit retirée chez le Cpnt — On passoit pour esprit — egaré — cela depuis 8 a 9 ans — Qu'en la voyant dans le chemin, on disoit, voila la folle Quentin — Depuis qu'elle a fait la Donation au Deputé — on a dit, voila Mlle Quentin qui va à l'Ecole — on connoit cela comme un trait de folie — il n'auroit pas fait d'affaire avec elle —

x
ne l'a jamais vu faire aucun acte de folie — Les bruits de sa folie sont plus frequents depuis la Donation —

No 12. Jn Bte Kellz — Curé — a remarqué avant & depuis la Donation que ladte Quentin avoit l'esprit-derangé — d'hyp avant que la Donation a été passé a été la voir, l'a trouvé l'esprit-derangé — Qu'avant & depuis cet epoque il lui a trouvé assez d'esprit pour l'admettre aux Sacrements —

Def[s] Nuls

Defend.s Wit.s

N.o 6 Louis Bourdazes – a connu la D.e Guertin un Esprit faible, mais elle repondoit avec assez de Juj.t Elle a fait des affaires assez importantes avec ses freres d'Ours – par un acte du 13 Juillet 1810 – en lequel le D.mde. doit parti – elle doit payé aux quittances plies par les Defend.s N.o 2. – Qu'en Aout 1814 lad.e Guertin a vendu une terre à S.t Ours – Depuis l'interdiction de cette fille, il a entendu dire qu'elle avoit perdu l'usage de sa raison – avant ce tems il a entendu parler de quelques singularités de cette fille, mais n'en a jamais été temoin –

F

à L'acte de Vente du ~~Juillet~~ Août 1814 lad.e Guertin a fait des observations sur les conventions, a mem fait changer les conditions proposées par l'acheteur – a pris des precautions pour s'assurer de l'état de son esprit, ayant entendu que l'on étoit disposé a contester l'acte de Donation en question à cause de son derangement d'esprit – Les singularités dont il a entendu parler, c'étoit, que lad.e Guertin alloit à l'Ecole à son age, entre 40 & 50 ans –

No. 7 Antoine St. Germain — 28. ans — con. la dte
Quetin depuis son age de connoissance — voisin —
elle ne lui a jamais paru avoir l'esprit derangé —
l'a vu en 1814.. comme à l'ordinaire —
Remontre de ses Sœurs chez témoin — après la Donation —

How far an Interdiction may be
considered to have a retro active Effect
in Nouv. Denizart. Vo ~~Interdiction~~
Demence — §. 3 No. 1 —

No 853

Galernau.
vr
Crottcau & al

In this cause a writ of Ca. Sa was issued agt. Simon Evans the principal Debtor on 27 May 1816 - returnable on 10th June next - On the 10th June 1816. the Sheriff returned a Non est inventus - On the 11th Oct 1817 the present action was commenced agt the Defendts as special bail, which was returned into Court on 20th of the same month -

The Defendts pleaded to the action and the Cause progressed in the usual course until the 5. inst. when the Defendts moved to stay proceedings on the surrender of the said Evans -

No 695

Siné dux
v
Barbeau

action for recovery of monies stipulated to be paid by Defdt on act of pltff

Declaration stated, that by act of 29 March 1815 — the pltff had purchased & acquired of one Franc. Menard & his wife a certain lot of land therein described, for and in consideration among other things of the sum of 8000 payable in 12 years the s^d Pltff undertaking in the mean time to pay the interest annually of the said sum of money —

That by act or deed of 23 July last (1818) the Pltff sold & transferred the said lot of land, on condition among other things of paying to the s^d Franc. Menard the aforesaid sum of 8000 and interest thereon as aforesaid

That on the 29^th March last there became due to the s^d Franc. Menard a years interest on the said sum of money

equal

amounting to £20 Ly. for the payment of which the Sd Plffs. are now threatened wth a prosecution by the said Menard & wife insomuch that the Plffs find it necessary to demand the same from the Sd Defdt in order to pay & satisfy the claim aforesd of the said Menard & wife —

The Defdts pleaded for exceptions to the Plffs action — 1. That Plffs do not alute or shew that Defdt was in default to pay or acquit any of the obligations he has come under —

2dly That Plffs do not shew that after the payt of the said sum of money became due, the Defdt neglected or refused to pay the same to the said Pr Menard & wife —

3. That Plffs are by their action entitled to demand only a quittance of the payt aspd — to the Sd Menard & wife, but this they do not allege was ever refused to them — 4 Defts insufficient —

To this Answer joined a plea to the merits — that Defdt had been always ready & willing to pay but had been prevented by the bad roads, now produces the quittance of payt

The Defend.t w. this plea filed a quittance from Franc. Menard for the sum of 480 – the sum in dispute, dated 14 April 1818

——

Foucher v Pothier & Henry

{ on question touchs answers on faits & art –

see Tit 10. Code Civil. art 8 –

Serpillon – Cet article veut que les reponses sur faits & articles soient precises & pertinentes sur chaque fait – parceque videtur non respondere, qui ad interrogata male respondet – Obscuré respondere et nihil respondere paria sunt – Une reponse equivoque ou ambigue, est regardée comme un refus de repondre et par consequent comme un aveu tacite des faits contenus dans l'Interrogatoire –

Nihil interest an quis aut taceat interrogatus aut obscuré respondeat, aut incertam dimittat interrogationem

1 Pigeau. 242 Si l'interrogé evite de répondre positivement, pour eluder la vérité, le Juge ou Commissaire peut l'interpeller de répondre catégoriquement — et si l'autre refusoit, ce refus pourroit, suivant les Circonstances, induire une preuve, ou au moins de violentes presomptions contre lui —

Nouv. Den. v° Faits dans. same authority $2. № 5 — and — $3. № 11 — si une partie refuse de répondre sur des faits, parce qu'elle les prétend étrangers et impertinens, sans détailler autrement les motifs de son refus, l'autre partie doit lever le P. Verbal, le lui faire signifier, et demander par une requête Verbale, que faute par elle d'avoir motivé son refus les faits demeurent confessés & avérés —

2. Comtot. Prat. Univ. p 335 —

№ 410

Jos: Turgeon
Franᵒˢ Pozeau } action hypothecaire -

Declaration states, that on 19 Oct 1811, the Pltff obtained Judgt. in this Court agt Jos. Gravelle for a sum of £41. 13. 4 w. interest from 6 Augt. 1808. agt. each up to 6 Augt. 1812 making a sum of £9. 3. 4 - making in all £59. 2. 1 and £8. 5. 5 per cent - That Pltff rd. from the sale of Gravelle's property £11. 16. 1 - whereby there still remains due to Pltff a sum of £47. 10 - w interest on £41. 13. 4 from 6 Augt. 1808 which said Judgt. was rendered on a certain deed of sale of an Emplacement made by Dft Parent to the said Jos. Gravelle, the said emplacement forming part of a larger parcel of land then belonging to the said Dft Parent, by having purchased the same from Jos. Lamoureux and his wife by deed of 3d Sept. 1804 - By virtue of which s. acts the Pltff acquired a mortgage as well upon the property & Estate of the said Jos. Gravelle, as

upon

upon that of the said Pre Parent, who was at the time debtor of the said Pltff, as appears by the act of the 6t. Augt. 1808, the Pltff by his Attys then accepting the said Joseph Granville in payt. of the said sum of money in the room & place of the sd Pre Parent his Debtor, did not waive his right upon the remainder of the land remaining in the poss. of the sd Pre Parent — but on the contrary reserving his right & privilege & Mortgage thereon, that is to say, upon the land described in the act of the 3e Septr 1804, qt Parent had purchased of Lamoureux who purchased from Moses Northrop by act of 2e July 1803, executed before the Pltff as Notary —

That by deed of sale executed before Segnin this Comptr 1 May 1810, the sd Pre Parent sold the remainder of the land which he acquired from Jos. Lamoureux upon qt the Pltff had his hypotheque to Gabriel Maisonneuve, that is to say "un Emplacement &c" which lot of

land

and the pltff avers is the same upon
wh he had acquired his mortgage, as
having belonged as well to the said
Parent as to the said Lamoureux his
Debtors —

That by act passed before Laforce NP on
6 apr. 1812, the said Gabriel massonneau
sold the said Emplacement he had ac-
quired of Pre Parent, & of which
the Defnde is now in the possession,
whereby he is become liable to pay to
the said Pltff the said remaining
sum of £47. 6. & interest which he
refuses to pay although demanded
Wherefore &c

Plea —

1. Dilte vague, irregular & insufficient
& the pretentions of Pltff ill-founded in
law and fact —

2. Pltff alledges no sufficient cause of
action agt Dfde — & shews no sufficient
title or right to his present demand
agt Dfde as possessing the lot of land
in question —

3. That neither the deed of sale of 3d Sept. 1804 — nor the deed of sale of 6 aug.t 1808 by Pr. Parent to Jos. Granville, gave the Pltff any right of mortgage — as the first contained no stipulation en fava of the Pltff — and the second because it was an acte sous seing privé —

4. That Pltff has not never had any right of ~~action~~ Mortgage upon the property of the said Pr. Parent — who became his Debtor only by an acte sous seing privé

5. That it is not true as alledged in the declaration, that the implacement pointed by the Defendt. makes part of the lot of land purchased & acquired by Jos. Lamoureux from Moses Northrop — it being on the contrary an implacement part of what the s.d Lamoureux purchased from Richard by deed of 28 July 1798

6. That although by the deed of sale of 3d July 1803 by & th. the said Lamoureux purchased a lot of land as therein described of Moses Northrop, ~~the Deft.~~ the Deft. obliged himself, under the general & special mortgage of all his property to the payt of

of a sum of 2000# in favor of the Pltff he cannot in anywise avail himself thereof agt the Defdt, as the sd Lamoureux by the payt of the said sum of money discharged such mortgage —

7 That on 6 Augt 1808 the Pltff gave a final discharge for the said 2000# — to the sd Lamoureux, and by accepting for the payt. one Gravelle, the Pltff extingd the former obligation of the sd Lamoureux and innovated the Debt, for which Gravelle alone became answerable

8. That at all events, the property of Jos. Lamoureux ought to be first discussed before recourse being had agt Defendt —

Replication — Pltff's action is well founded —

Because by act of 2 July 1803 the Pltff acquired a Mortgage upon the lot of land therein mentd, and because the Defendt. as being in Possession of the

said

said lot of land —

Because Plff never gave up his right of mortgage upon the said lot of land by accepting Granville as Dept, but on the contrary reserved his right of mortgage on the property of Lamoureux & parent —

That the acquittance discharge set up by the Defend. cannot discharge him from the present action as the conditions of that discharge were never complied with —

—

See admissions —

On the part of the Defend. it is admitted that at the time of bringing the present action he was in the poss. of the lot of land mentd. described in the plff's Exhib. No. A. B. 27 — being one half of the emplacement sold by Jos. Lamoureux to Pre Parent fils on 3e Sept. 1804 — by Parent sold to Maisonneuve by act of 1 May 1810 who sold it to Defr. on 5 Ap. 1812 — The other half of the emplacement sold by acte sous seing privé. Plff's Exhibit No 5

to

to Jos. Graville — and not in the possession of Defend^t —

On the part of the Pltff it was admitted that the acquittance on the Defend^ts exhibit, being deed of Sale 2 July 1803, are signed & subscribed by Pltff, & further that the lot of land described in the s^d act, never was in the possession of the Defend^t —

Pltff's Exhib. N^o 3 —
Sale by Moses Northrop to Jos. Lamoureux of a lot in the village of Terrebonne by Deed of Sale of 2 July 1803 — In this deed Lamoureux promises to pay Turgeon 2000^# — in six years, for & in dis charge of Northrop — w^t. oblig. & hypotheque generale & special
Exhib. N^o. 4 — Vente par Jos. Lamoureux à P^re. Parent — by Deed of 3^d Sept. 1804 — of a different lot or emplacement —
N^o. 5 — Vente Sous Seing privé by P^re Parent to Jos. Graville of an emplacement last above ment^d — In this act Graville undertakes to pay Turgeon 1000^# — in the

room

room and stead of Parent—

No. 6 Vente par Pre Parent fils to Gab. Mais onneme by deed of 1 May 1810 — The remaining part of the lot of Parent had purchased from Lamoureux by the apres. deed of 3e Sept. 1804

No 7. Vente par Gab. Mais onneme to Franc. Regeon by deed of 6 april 1812 of same last mentd. lot

Defends Exhibits —

No 1 Authentic Copy of Deed of Sale of 2 July 1803, by Mons Northrop to Jos. Lamoureux — with a final discharge of the monies of Lamoureux undertook to pay to Duff —

Guy v. Rivers } On motion to be admitted to prove by verbal testimony the agreement touching the lease

see Hays Nouv. Ferriere v^o Preuve p. 112. 113 — } same authority
— Ferr. Dec. v^o Preuve. p 447.
Danty - p. 313 —

Pour ce qui est du Bail Tacite il est vrai qu'il ne se peut prouver par temoins, puisque c'est un Contrat qui doit par consequent être redigé par ecrit — mais l'occupation des lieux et la Jouissance sont des choses de fait qui se peuvent prouver par Temoins — La Loi Officium &c — que Boiceau cite en cet endroit à lieu contre toutes sortes de possessions — cites Legrand on the Coutume de Troyes — Charondas en ses Reponses - ch. 52 —

Savary vs Meunier & ux } action for debauching Pltff & getting her wh. child — conclusions of Decln

Pourquoi conclut a ce que le Defend. soit condamné à lui payer par forme de dommages & intérêts pour les Causes ci-dessus mentionnées ladite somme de £300 Et en outre à payer à lad. Demdsse lad. somme de £2 — par chaque mois & d'avance à compter du dit Jour — 4 Septbre dernier pour la nourriture & entretien de lad. Marie Eusebe, dont lad. Demanderesse est devenüe enceinte des faits du dt Defend., et est accouchée led. Jour quatre Septembre dernier, et ce jusqu'à ce que ladite Marie Eusebe ait atteint l'age ou elle pourra gagner elle même sa nourriture & entretien — le tout avec depens

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Guy vs Rivers }

Jugé par arret du 2 Mars 1595 que l'on n'est pas recevable a faire preuve par temoins que l'on a loué une maison pour trois ans à raison de 100# par an — la convention etant niée —

Hunter
v.
Munn

action by Pltff. stating himself a master
&c. Defendt. a Ship-builder — for
£50 — money lend, on the following
undertaking —

"Received from Mr Thomas Hunter,
"(I say borrowed) fifty pounds Currency
"bearing interest till paid." —

Montreal 18 Dec. 1816

Geo. David Munn

Thos. Barton

Barton brot. up as a Wn. for Pltff — Objected
to on acct. of interest —

Griffin
vs
Durand & on indorsed Note —

The Puff admits that the indorsement on the Promissory note filed in the said Cause was filled up & written over the signature of Pre Deshautels after the said signature had been written — full value having been given by the Puff for such Note & the object of the indorsement being to vest the said Note, & the Money therein specified in the Puff —

Note is thus

Sous deux mois de la date du present je promets payer à Mr Pierre Deshautels, ou à son ordre, la somme de Cent Cinquante livres, cours actuel de la Province du Bas Canada la quelle somme étant pour valeur reçue

Montreal ce 9e Decembre 1817

"Jerome Durand"

indorsed

No 615

Benj. Holmes
& Cheesman

Demurrer case, parties stated to be merchts — Note Payable to Plff or bearer — for value rec^d — 2. is on usts suffic^t — yes —

Griffin
Durand

Judgment —

Pay the amount of the within note to Mr Robert Griffin or order, value rec^d — Montreal 2^d Feby 1818. Pre^a + Deschantels

marque
Franc^s + Desautels

marque
Nicolas Beland
Joseph Mathons } Temoins

The Defend^t in the above Cause admits, that the Signature Jerome Durand subscribed to the promissory note in the said Cause filed, being the Plff^s exhibit No 1 is of the proper hand writing of the Defd^t in the said Cause, and that the mark

subscribed

subscribed to the indorsement by
Pierre Desautels in the declaration
of the Plaintiff named in the presence
of Franc. Desautels, Nicolas Beland
and Jos. Matthews, witnesses thereto;
and that the said Indorsement was made
and signed by the said Pr. Desautels
by affixing his mark thereto as a pour
and that the Signatures, Francois
Desautels, sa marque, Nicolas Beland and
Joseph Mathews to the said Indorsement
Subscribed are the signatures of the said
Witnesses, and the signatures of the said
persons last named respectively —