No. 2.

Note Book

from 3d. Octr. 1808 to 15th. Febry. 1809

Monday 3d Oct. 1808.

Present

All the Judges.

Piché. — } On Defendts evocation from Inferior Court
Piché. — } Admitted, conditionally, as by Plea future rights may be bound

Courtemanche Syndic } Bedard.
vs } action for money laid out as Syndics — & for reimbursement
Beaupres } out of monies in hands of Defdts. —

~~Defendts. pleaded~~ that not liable as there is no solidité between them
That Pleff. is solidairement bound wt. defendts. as Syndics for all undertakings by them, & therefore same solidité ought to exist between themselves —
Poth. Obl. No. 267.

Rolland. Defdts. That Defdts. are accountable only to those who named them and not to their fellow Syndic. Domat. liv. 2. Des Syndics. tit. 3. page 166. —

That Pleff has no action ~~tgt.~~ Defdts. to render acct. to him

~~Domat liv. 2. tit. 3. pag 166~~

Dom. liv. 2. tit. 1 Des Tuteurs. Sec. 3. p. 155. — Sec. 28. 29. 30.

Declr. states that administration divided among Syndics — & Pleff destroyed solidité if any existed — Domat. p 109. tit. des Syndics —
Domat. l. 1. V. 1. tit. 16. Sec. 2. §. 7. p. 109. — ϕ

Bedard — That authorities cited by Defdts. make for Pleff — Solidité admitted in favor of Parish — also in favor of Creditors of parish — therefore in favor of Pleff for what he is creditor of the parish. qt. is Pleff. action —

That accts. between parties may be easily settled from acts of reparation monies recd. & monies paid — & if Defdts. have monies in their hands are liable to Pleff.

If Parish had assigned a separate district to each Syndic the Defdts. authority wd. apply, — but not admitted

Dumont
v.
Rochou
& al

action agt. Dfds. on Edit 1743. for restitution of a lot of ground in the possession of the Curé, given to him as Curé à perpétuité — by Pliff. father in 1770.
Edit 1743. art. 10. 13. 18. 21 —

Denisart Repertoire Dic. Ferriere } vo. mainmorte — to shew that office of Curé is a mainmorte.

That act of Donation was neither accepted nor insinuated. and therefore null — ord. 1731. — art. 5. 6. 8. 14. 20. 32. Denisart. nouv. Coll. vo. Donation Dic. Droit. vo. acceptation. vo. Corps & communautés. vo. Droit d'amortissement —

That at time parish did not exist, & the person acting had no authority —

Bedard for Defdt —

1. That Pliff. sues as heritier, but makes no proof of that quality — files Ex. baptême, but not of his father's mariage, qh alone constitutes legality of birth —

2. That Edit 1743 does not apply for acquisition of land for a Church, & Cimitiere, nor are lettres d'amortissement required for it —

1678. 3 By ordre. of 1678, art 7 celui qui aumone le terrein pour batir une eglise aura le droit du patronage — art. 7. ~~And by this ordre. it appears that the Seignior~~ & therefore lettres d'amortissement were not necessary — That Seignior himself bound to contribute to expence of Church &c —

4. That Pliff cannot have restitution of the property but on paying the improvements made on it by the Church.

That ordre. of 1743. deprives Communautés only of right of restitution. art. 21 — that fabrique is not a Communauté.

Ferriere Gr. Comentaire. 1 vol. p. 110. 111. makes distinction between fabriques & Communautés. —

That as to acceptation of act, sufficient appears, that it was ratified by Mr Dumont in his life time, and acquiesced to by him —

As to Insinuation, it has been made, but by mistake could not be found to fyle with other papers — moves to file it —

Rolland. That Defd. by his Plea admits that Pliff is son of Donateur.

That Ext. de mar. is suff.t at least to throw a contrary proof on Defd.ts

That a portion of the land is by the act given to the Curé separatly which is the part claimed by Pliff. —

That Curé, is a Com.t within the meaning of ord.ce of 1743, voyez Dic. droit, vo Communauté — and as such are possessors of bad faith —

That lettres de permission are necessary to Community, to acquire, altho: they pay no dues for it.
Droit d'amortissement, —

Halliday v. Tucker } Nothing said ag.t Report —

Mears v. Randall } on Defd.ts motion to set aside defaults obtained ag.t him & to plead to action, owing to irregularity of service of process — Granted by consent

Huckens v. Pease — } on Defd.ts motion to set aside defaults obtained ag.t him w.t out Costs from irregularity of service of process — allowed to take off default — costs reserved —

Tuesday 4th October 1808

Present

All the Judges

Provost
Raymond } action for goods sold —
Refce. to arbitrators & hearing on Report — Pliff prays homologation.

Ross Defdt. Does not object to Report, but submits whether Defdt. ought to pay costs — allowance to Raymond for business ought to be allowed

~~Panet~~ Panet for Pliff. says that business done by Raymond ought not to be allowed — he refused to give a copy of act or to make the partage

Aymond
Doyons } action of Separation — on grounds of Sevices —

Rolland. Defdt. denies grounds of Pliffs. action being proved — that Pliff behaved in a violent manner towards Defdt —

Gordon
Coquillard } action of Separation for cruel treatment —

Panet for Defdt — complains of violent conduct of Pliff

Gray
Scott } action for recovery of a Promissory Note — made payable to the Pliff as to the attorney of one Amos Hayton — Pliff declared in his own name

Defdt. says that the action is irregularly instituted by Pliff for recovery of money in his own name, ~~ought~~

No. 74. Oblign — No. 53. 54. 55 —

Mandat No 87 —

Serres. Inst. Droit Fr. — p. 211

ought to have been instituted in the name of Hayton —

Denisart. vo Procuration — No. 15. Proc. Genl. No 4. —

Oblign — ~~[illegible]~~ No. 882.

Lex. Mercatoria — on head of bills drawn, or indorsed by the Attorney —
Vol. 1. p. 440. No. 83 — & No. 85 —

6. Mod. Rep. p. 228 — Robert vs Harnage —

If

Sewell for Pltff —

By Promissory Note ait, no distinction is made between the Attorney or principal — when note made to him —

Pltff had power to discharge the note —

Note made payable to Pltff personally — the addition of Atty to A. Hayton not material —

Viners Ab. p. 242. 243 a — 2 Ventris 296 — 307 Cramlington vs Evans. decided that Atts might sue on a Note made to one person for use of another —

Carth. 5. Skin: 264. 1 Shower 5 —

Beck vs Blake } on Pltff motion that ~~Dfdt be held~~ by be permitted to file certain accounts referred to by ~~[illegible]~~ Dfdt in his answers to certain faits & articles. —

Bedard for Dfdt opposes the Pltff motion — saying that the papers offered to be produced belong to another Record in a Cause adjudged in this Court and some of them are the property of Dfdt — and that ~~it~~ Pltff application is irregular & improper. ~~for Pltff~~

Wednesday 5th. October 1808

Present

All the Judges

Quintin
v
Quintin } Interlocutor ~~examining~~ Practiciens to report upon the matters in contest upon the account rendered.

Courtemanche
v
Beaupré } The Exceptions pleaded by Defdt. overruled, and the accounts filed by the parties submitted to ~~Practiciens~~ Arbitrators to report thereon.

Cazeau
v
Gyrouloux } On rule Nisi –
Pleff. motion for Judgt for 600#. for ~~Lods & ventes~~ Cens & Rentes of certain portions of land

Sewell. Defdt – no evidence before Court of ~~amount~~ of Cens & Rentes – or of wheat said to be due
Lods & ventes charged not due. being partage between family

Bedard – Lods & ventes are due – that the parts de terre were acquired by Defdt. after the partage in the family & possessed by him alone –

Hammond v Chevallier { Damages for having caused Pltff. goods & merchandises to be seized —

Rolland. for Defdt. says, that by Stat. of ~~1805~~ 1795. all persons of description of Pltff. going about selling & exposing for sale goods &c — ought to have a license — That as Encanteur, he could not expose to sale any goods without having a license, and upon demand made to him by a Magistrate he ought to have shewn it, & by his refusal to shew it his effects became liable to be seized —

Oahle v Beek } on ~~motion~~ Requete for an Inscription en faux presented by Pltff agt an act fyled by Defdt —

That Pltff is entitled to have an Inscripn de faux either by a principal action, or an Incident agt any piece produced by the Defendt. in his defence

That the Court has the power to reform the piece if it appears to have been falsified by Defendt —

That the act in question was drawn by Defdt. as a public Officer & in which he himself was the debtor, and the change made by the falsification in question operates to the prejudice of the Pltff inasmuch as it tends to deprive him of a certain sum of Interest on the account settled —

Sol. Genl. for Dfdt — denies the falsification, that the change of the words from to the word of, is of no importance — makes no change in the nature of the Obligation, as it grants to Pltff all he is entitled to, & the word from would not even be correct —

Objects to the regularity of Inscrip. de faux — That a former application has been made on same point & adjudged by the Court —

That the exhib. produced by Pltff. is a Copy of that fyled by Defdt. agt gh. the Pltff prays an Inscrip. de faux — cannot be admitted to falsify his own evidence — by his act he has admitted it —

Rep. Juris. Inscripn de faux. — to shew there can be inscrip. de faux only agt papers produced by adverse party

That Defdt. was no party to the paper in question, his name being therein only ment'd as a Debtor, but by it he undertook nothing, nor was he bound to any thing —

That the charge contended for is contrary to Law, as it would tend to charge the Defdt — with Interest upon Interest —

That if the Inscrip. de f: be made out the paper must be thrown aside entirely as waste paper —

Bedard for Pltff. Denies that there is any Judgt. dismissing him from Inscrip. de faux. that his motion to ~~[illegible]~~ Defdt — whether he intended to use the piece in question, is no Inscrip. en faux — nor can it prevent him from making the present motion —

Poth. Proced. p. 335 —

That any party may demand falsification of an act either to establish his demand or defence —

That party may demand Ins. f. at. any act in qt. he is interested —

That the Court has a right to reform the Act. (same auths) & the party may use it after it has been so reformed —

Ib. p. 345. same auths —

~~Robin~~
~~Fagnan~~ }

Thursday 6. October 1808

Present

All the Judges

Flammand v Chevallier — } Interloc. admitting the parties to proof —

Oakle v Beck — } The Court were of opinion that as the piece ~~filed by the Pltff~~ agt. which the Inscrip: de faux is demanded was filed by the Pltff. and an action in the nature of a faux principal brought upon it, the conclusions whereof were refused to be granted as the Attr prosecuting had no sufficient power or authority to institute such an action or take such conclusion — That the Requête now ~~presented~~ by the Pltff tending to the same purpose as the Declaration, cannot be admitted, because it is a demand en faux incident, which can be had only agt. a paper or piece produced by the opposite party, but not agt. a piece produced by the party himself, as in that case a faux ~~incident~~ principal only can be prosecuted —

Logie v Munter & al. — } On award of Experts — 'on rule to shew cause why it should not be homologated —

Objected by Defendants —

1. Does not appear that parties were heard before Experts —
2. Toisé made by Mr. Charland — when it shd. have been made by Experts — ~~and that Charlands toisé~~ was not made in presence of the parties — nor does it say when it was done —

That toisée so made allows to Pltff more than he asks by his Declon

Answered by Pltff

1. Not necessary to state on Report that parties were heard before Experts as public officers are always presumed to do their duty — but if necessary may be corrected by the declaration of Experts —
2. Sufficient that measurement was done by Charland under the view and direction of Experts —

Roi
v
Paré —
&
Perrault ~~Interv~~ Tiers Saisi
&
Lacroix Interv —

on claim of Lacroix. Intervening party —

Rolland — Says, that Tiers Saisi became bound to pay to the Intervening party the amount of the monies seized as appears by the declaration of the Tiers Saisi: —
Bourjon. tit. ~~Execution~~. Ch. 1. tit. 6. p. 550
Contr. vente. No 552. on delegation — see also 558 —

Viger. for Pltff
There can be no transport without signification
Pro. Civ. Ch. 2. par. 6 — Fer. cont. art. 108. p 201. No 3. & 4 —

—

Cook
v
Austin

as to regularity of service of Sum^s —
service made at Bolton upwards of 30 leagues from Court House five days before return —

—

Hart
v
Agnew

On Rule Nisi, why Judg^t. should not be revived

Def^ds. prayed to examine Pltff. on faits & articles as to payments of Judg^t — v^r Interrogatoire. Dic. de Jurisprudence —
Pltff objects that in Law the Def^ds. are entitled to such proceeding

—

The Court were of opinion that faits & articles ~~could~~ can not be granted after Judg^t. that only recourse on default of other proof is by Serment decisoire. —

Monday 10th Oct. 1808

Present

All the Judges – Mr Panet except^d

Logie v^s Hunters } Interlocutor that Experts make a new visit & measure the building & report thereon after due notice to the part

M. Plessis Art. Bro } On Judgt. Separation – Pleff moves, that Interest on her Dower be granted to her from the day of Separation, notwithstanding the husband be still living –

3 vol. Ferr. art. 255. glose No. 10. – p. 326. 327. & 328 –

" —— " art. 224. glose. 2. No. 26. & 27. p. 186. –

Le Pretre. Cent. 1. ch. 67. p. 190 –

Renusson de la Communauté ch. 9. No. 17. p. 60 & 61 –

—— Contrary authorities. –

The same above cited, wherein exception is established –

Denisart. v^o mort Civile

Lacombe – v^o Douaire Sec. 9. No. 1 – No. 3 –

—— v^o Separation No. 12.

—— v^o Augment

Pothier – Douaire No. 154. 156.

—— Communauté p. 1. ch. 3. art. 7. § 2. No. 443 & 445 –

Question as to a Prohibition –

~~Chalifoux~~ ~~Mâros~~ } Rule on parties

Lussier ~~Choquet~~ & Sanguinet } On contestation between Pliff & Garant —

Pliff says, that Gar^t. ~~[illegible]~~ guarantee — That by proof in Cause, Def^d. has passed over his boundaries & trespassed upon the lands q^h. belonged to Gar^t.

Garant — That testimony adduced is uncertain, & no Judg^t. can be given on it That the original action is for a voie de fait — for q^h. there can be no garantie —

No proof of boundary at 1½ league from River serving as separation between Pliff. Seigniory & Fief de Beloil —

Bedard counsel for Pliff —

Action is Petitoire — not en voie de fait —

Proof sufficient that land on q^h. wood was cut belonged to Garant —

—

~~Pangman~~ ~~Duprat~~ } Murdele ~~Dupéré~~ } On Exception — as to title of Marchand-aubergiste under q^h. Defend^t. is summoned —

~~Wm. Smith~~ ~~Mary Smith~~ }

Laframboise.
v
Paillé —
&
Ch. Charpentier
Tutor of Defd. Children
Oppt —

On the opposition of Charpentier to obtain half of the monies arising from Sale of emplacement sold by Sheriff, as belonging to Commts between Defdt & his late wife —

Defdt after making Inventory contracts new Debts, qh did not belong to the Community — Pltff contested this fact proof ordered — proof now made —

Objects to regularity of execution of Com. Rog. — that no Return on Commission — nor does it appear that the Comrs took an oath from Wits —

That proof is insufficient — & moves that Com. Rogn be rejected —

That facts to be proved are ~~[illegible]~~ the obligation on qh action is brought —

That Grant Wits is interested — the debt on qh action is founded belonged to Grant & Laframboise, and Grant has made over his share of it to Pltff.

Sewell for Pltff. states debt due to Pltff. or to Wm Grant & Laframboise out of Defendt Inventory — in qh the lot of land sold is also included — Contends that Wm Grant is a compt Wits — who proves existence of a debt before death of Defdr wife — shews 2 defft debts, one by Oblign another another acct —

Bedard — That it is under Judgt obtained on the Obligr in this Court that the emplacement was sold —

Pangman
v
Duprat

On action to recover of Defdr damages for carrying his grain to another mill to be ground ~~to~~ the prejudice of the Pltffs right of Banalité over Defdr land —

Ross for Pltff. produces title of Concession of Defdr land — to prove his right

Panet for Defdr — contests Pltffs right of banalité — by art. 71. Pltff must shew a title in writing, qh he has not done —

Declon insufft not stated that Pltff possesses a mill for use of Defdt —

Ross - That Dulon sufficient - that Defd. possesses part of land bound to banality of Pliffs. mill -

Ferr. vo. Moulin - right of banality reciprocal -

Edits. p. 290.

Gillespie & al
Auldjo & al
Brehaut, Oppt.

On Opposn. of Brehaut -

on Oblign. for £400 -

Sol. Genl. Plea of compensation by Brehaut to Duniere, as to this debt - on three points - & question whether ans. given to this plea be suffit. to entitle him

Oppt. says he has pd. - but makes no proof of such payt. -

Deed of Transaction filed by Oppt. made by ~~Duniere~~ Brehaut as Attys of Pent

Ross for Oppt. says that there were mortgages on property sold by Duniere to Brehaut, more than the consideration money -

Costs in Exon £24. 18. 6
Sub. Cost 1. 9
£26. 7. 6

Martin, Cur. -

on claim of — Crane -

Sol. Genl. for Curators, says that claim is insufficiently set forth, there being no ~~delivery~~ sale nor other right of action stated -

Ogden for Claimt. says, that claim was hastily drawn up & made by having been misled by Curator's representations -

The Court admitted the Claim~~ant~~ to amend his claim on payt. of Costs.

M. Lre. Robin et al
Jos.n Fagnan
Exer &c &

action by widow & heirs of late Fr Lapierre agt Defendt. to render acct —

Ross for Defdt. Fagnan — states that he took poss. of property as Exer of late Lapierre — that he has a year & day to account & therefore action is premature —

Rolland for Desforges & Charron — That Pltffs. have no right of action agt Defendt. as the Exer is the only accountable person, & by Law he is not bound.

That Pltff. have made over their right to Turgeon of Terrebonne & therefore have no right to bring the present action —

That Pltff. voluntary interdiction ought not to avail agt the acts she has passed —

That ~~the~~ Lapierre, Ant. Lapierre, defunt, ~~& his~~ & angelique Lapierre whose children are in cause do not prove their quality. —

Ross for Brunel. That Defendt. is not accountable, nor ought he to be joined with the Exer, who alone is accountable —

Vigier for Augé — that Pltff. have not proved their quality —

Bedard for Pltff — replys — that Defendt. having pleaded to the action have admitted Pltff quality & right —

That the act of Cession to Turgeon is in Law void by the Interdiction of the party making it — & also the act of Donation from same Cause —

Pos. vente. No 556 — No 596 — That action may be instituted either by the Cedant or Cessionaire —

Lacomb. vo Transport. No 5 —

That Pltff. has right of action agt Jerome Augé for her share of the Community, as her husband could test only of his half of it — that this Defendt. is a legatee, & could only ask delivrance of his legacy & could not execute the testament himself

That the Executor is also in possession of the effects of the Community, & must account for the half which the Testator could not alienate —

That Pliff has an action agt Executor even before year & day to account, if he does not alledge that he has not been able to execute the Testament — Heirs Levesque v Jones Exec McLeod —

That if heirs are not entitled, yet the widow is entitled to her action —

Tuesday 11th October 1808

Present

All the Judges.

M. Plessis v. Antn. Bro } Judgt. disallowing claim for interest on Dower, as in no case of Separation can Dower be granted, in case of Separation de corps & de biens, an alimentary pension in lieu of Dower is allowed, but never in case of Sep. de biens only -

Pangman v. Dupras } The Court is opinion that banality of the mill makes part of the Fief, and no title is requisite to be shewn to establish it, and therefore that part of Defdts. plea of Exception was dismissed -

Prohibition On application of Mr Sol. Genl. on behalf of Thomas Filer for a Rule on Jessi Pennoyer & Henry Cull, Esqs, Justices appointed for the determination of certain small causes under Stat. 47 Geo. 3. ch. to shew cause why a prohibition should not be granted agt. their proceeding on a certain Judgt. rendered by them on 13th Septr. last, as not being within their Jurisdiction - being for a sum of 20 dollars for an agreement made by said Filer to pay to one Cushman Smith -

The Court having seen the writ of Summons and Judgt. granted the Rule -

Beaudry
v.
Briecuel } On evocation from Infer. Court for establishing a Cours d'eau —

Lacroix for Pltff. a certain Proces verbal made & homologated for a cours d'eau between all the parties, on another Suit 2 Mar 1804.

Present Suit instituted for same purpose, as many of parties in the former P. V. had not been called in —

Report of Experts in last P. V. 16 Sep. 1806 states that first P. V. cannot be executed as the land is too low at the mouth of Ditch which falls into the River St L. and instead of draining the lands of the parties, will draw the water from the River —

Panet for Interessés who join wt Pltff. That Experts on second P. V. have stated it as their certain opinion from clear proofs, that first P. Verbal cannot be put in execution —

This action instituted as a mode to correct the former —

Ross. for Interessés on first P. V.

First. P. V. made by 4 Experts and a Surveyor, two Experts named by the Opposants —

The 2d. action brought by two Interessés in the first Suit, and rule so made as to set aside the first P. Verbal —

The 2d. action should have been to set aside the first P. Verbal and all the parties called in to be heard before naming Experts — and the 2d. Expert say that the discharge should be again shut up.

Vigé. for first P. V.

First. P. V. a chose jugée — cannot be set aside without calling in all the parties —

Many Judgts. of Inferior Court have rejected such proceedings

Bedard for 52 Interessés — for 2d P. Verbal —

Quest. whether this Court can set aside the Indgt. on first P. Verbal & conform new P.V. —

Poth. Obl. No. 869 — Indgt. is null when object of it is impossible and it is certain that P.V. of 3d Mai 1804 is impossible to be executed —

A new action is the only mode to set aside the Indgt. already given, as all the parties in the first action are no longer before the Court, and a rule upon them to shew cause could not call them before the Court —

Sewell on same side wt Bedard —

That the Interessés who oppose the hom. of the second P.V. have not excepted to the principle of the second action, but have pleaded to the merits of the ~~Ex~~ P.V. —

—

Lacroix & Limoges & Jordan ~~opp~~ Intervs —

action Petitoire, to obtain from the Defdt. a piece of ground in poss. of Defdt. —

Intervs. party, garant of Defdt. says, that Pliff is not proprietor of the lot of land in question —

In 1784. Jordan sold lot to Pliff —

Pliff gave power of attn to Jordan to sell & dispose of his property being indebted to him —

Jordan made a Cession of the lot to his Creditors — & Intervs party now sets up a title under power of attn Pliff gave, & that only action Pliff can have is an action of acct. as his procureur.

Incdt demand cannot be supported — for paymt. of money —

~~Pliff~~

Pliff. That Pliff gave Procur. to late Jordan, to sell the lot, but

Jordan

Jordan died before making any Sale, his heirs cannot sell under that procuration, nor make any Cession of it,

That ~~L Jordan~~ act of Cession makes no mention of the lot of this land — And even if it had, he could not make a title to himself nor sell it as his own — The Cession was never accepted by his Creditors, & therefore there could be no alienation, as they alone could in that case be the proprietors —

That Procn. was given to dispose of lot for profit of Pltff but not for profit of Procureur — Poth. Mandat. No. 166 —

Poth. Vente. No. 13 — Dom. liv. 1. tit. 2. Sec. 8. Som. 2.

Rep. de Jur. p. 479. Vo. Vente. on ne peut acheter les choses dont on a l'administr.

That Heirs of Jordan sold to Defendt. — but they could not under the power of Attn to their father make any title to him — the power of Attn determined by death of Jordan. Pothier. Mandat No. 101. —

The Incidental demand for Intervention is for damages for the illegal sale made of the above lot

Poth. Vente. p. 2. Ch. 4. No. 270. 272. 273 — obligations contracted by a person who sells the property of another —

Sewell for Defdt —

Jordan was bailleur du fond to Pltff — That Pltff became indebted to Jordan in more than value of land, & being unable to pay gave this power of Attn to sell the above lot

Cites Cases. Goddard v. Bouc.
Briere v. Bouc } In 1801 —

Poutré
vs
Lavoie

action de bornage — hearing on proofs & merits —

Report of Charland supports proofs adduced by Pltff. agreeable to which he prays Judt —

Defendt. pleads that he is bounded by an old fence & pignon of his house — & the line is pointed out on the plan which corresponds with the old boundary marks

—

Johnson
vs
Murray
&
Henrick

On opposition of Henrick for £30 — & for mortgage on Defendt. Estate, in consequence of a declaration made on oath upon Interog. upon fait & articles in a Cause between Henrick and Murray, &

Beaubien for Oppost. states, that the debt is now due as the Condition. —

Barnage Traité d'hyp. p. 108 — Bourjon —

Sol. Genl. that promise of Murray was not accepted by Henrick

—

Demers
vs
Bissonet

Action for damages for non execution of an Agreement to furnish a certain quantity of wood.

Sewell for Deft. Bissonet fils —

Bissonet pere is the principal, the other Defd only security or pleige & Caution, & the principal ought first to have been discussed. Obl. No. 408. & as to Son the action ought to be suspended — Poth. No. 413 — not bound to make offer of money for discussion —

Panet. replies. — Procedur. ch. 2. art. 3. that caution ought to indicate the property to be discussed —

Rolland, Exr
v.
Desloges. } Prays Judt. for balance as Deft. has made no proof under Interlocy

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Wednesday 12th Oct. 1808.–

Present. –

All the Judges. –

Provost
v.
Raymond } Judt. for amount of award with Costs, reserving to Defendt his recourse for his Incidental demand –

Kinsey. –
v.
Sanford } on claim under marriage Contract –
Objected, that Contract was not insinuated

Sol. Genl. – That it is a Conventional Dower & therefore not liable to Insinuation.

Poth. Douaire. No 5. – That Dower is not a Donation but an Obligation – not subject to Insinuation –

Id. No. 127. –

No. 123 –

Sewell for Deft. – That clause of Deed does not mean to say that the settlement made was a Conventional Dower

3 Fer. Gr. C. p. 671. No 3. –

Distinction between heirs & Creditors – 2. Bouj. p 135 –

Chaurette
vs
Chaurette

On deed of sale –

Defdt. pleads that he has undertaken to pay large sums for Pltff, & therefore Pltff ought not to have his demand until he shall have paid those several sums

Claims also that Pltff produce a discharge from the Seigniors for 500£ arrears due on the land –

Pltff – Contends that Defdt. never paid any monies for him That even if such monies had been paid, there will yet more in the hands of the Defendt. more than sufficient to pay the amount of the sums paid by him for the Pltff

Friday 14th October 1808

Present

All the Judges –

Gordon
v
Cleit } action dismissed –

Huckens
v
Please } On motion to quash Sairie arrest for want of sufficient service

Defendt. says, that service was made at Gaol after Defd. had escaped from it, & also at house of one Beach at Chateauguay, where he never lived, except about two hours that he stopped there on his Journey out of the Country –

Cites. Nouv. Denisart. vo Domicile
– H ——— vo assignation –

Scott. –
v
Willard. } On deed of Sale –

Defdt. says – That at time of sale there was Seigneural right due by Pltff on the land – which now appears by Seigniors acct. & for which Pltff ought to be held to give a receipt & discharge from Seignior before obtaining Judgt –

Pltff says, that in deducting

Gray
v
Scott

on merits after proof of Note —

That Defendt. contracted with Pltff as Attg of Hayton —

That Creditor may indicate to whom the money shall be paid by his debtor and here the Note indicates to whom it shall be paid, vizt. to the order of the Pltff — which is part of the agreement between the parties

Obly. No. 57. Ib. No. 480. — Ib. No. 489.

Not in power of Hayton to prevent Defdt. from paying the amt. of the note to Pltff —

Defdt. says — That Pltffs. authorities are inapplicable — That difference between an Attg. ~~contracting~~ settling pgt. of a debt for the benefit of his principal, & where the principal acting by himself points out to the Creditor to whom the debt ought to be paid — refers to the authorities formerly cited. —

—

Lawson
v
Robertson

To obtain ~~a title for~~ monies paid on sale of a lot of land by Defdt. sold to Pltff, for gh. Defdt had no title —

Pltff. states, that he has had enjoyment of land for 2 years, has made improvements, & received no emolument or proceeds from it, & as Defdt now refuses to compleat a title, Pltff claims money he paid for it

Defdt. says, that it is Pltff own fault if he has not obtained a title, as he ~~refused~~ to pay the balance of the purchase money, and — abandoned the land ~~without~~ any request or order of Defdt —
And as to monies paid, they ought to be considered as Arrhes, and are not now demandable as Pltff has abandoned his bargain —

Borduc
v.
McFarlane

Action en Sep. de biens –
Proof compleat – case submitted by parties –

Auldjo
v.
Jordan
&
Claus
&
McDonell Curator
to Estate of Russel.

On question whether Sir J. Johnson is a competent witness in the Case, he being uncle to Wm Claus one of the Defendants –

Counsel for Curator, states, that Claus appointed Sir J. Johnson his attorney, who employed the late R. Russel as an attorney for the defense of the Cause, and by that means Sr J. Johnson is a temoin necessaire, as he alone has any knowledge of the facts & transactions between the late R. Russel himself on this subject –

Pliff answers, that law makes no distinction as to the competency of a witness who is within the prohibited degrees of relationship to either of the parties – as to temoin necessaires; the principle does not apply, as it was Mr Russel's own fault if he did not get such proofs as he can use –

—

Nowland
v.
Martin.

Action for monies had and received by Defendt. &c
~~Defendt~~ Pliff; contends that

That Pliff's demand is made out from the exhibits filed by Defendt –

—

Saturday 15th Oct. 1808.

Present

All the Judges — Mr Justice Ogden absent

Menetrier v England } action on deed of Sale —

Pliff, says, that Defend. pretends right to retain one half of the ~~[illegible]~~ Consideration money, as belonging to Minors — but even if so, that Defdt owes the other half and the ~~whole~~ Interest on the whole — as to ~~Vente No 284~~ Interest cites Cont. Vente No 284 —

Defdt — That Pliffs cannot claim any part of monies, without shews. that the Defend. cannot be troubled by the minors as they are proprietors for one half.

That if Pliffs. are entitled to but one half of the Capital, they can claim but one half of the Interest. —

Pliff. That Pliff. are entitled to have whole Interest, as Defdt. owes the Interest, during his enjoyment even if an Eviction were pending agt. him —

—

~~Dufresne~~ v Souligny } Damages for cutting wood ~~on Pliffs. land~~ reserved for Pliff on land of a third person — evoqued from the Inferior Court —

Defdt — by exception — That Pliff has no right of action agt Defdt being only Usufruiter of the ~~land~~ coupe de bois, & ought to be brought by proprietor of Soil. —

Pliff — says he has a right by title to the enjoyt. of a coupe de bois, in which he has been injured by Defdt — & has right for the injury done to him by Defdt —

Defdt — Quest. whether the right to the coupe de bois is such to entitle Pliff to bring action, being only a personal créance —

Pliff brings an action of Trespass - for the coupe du bois -
this is a personal thing & no trespass can be had for it - as long as the timber is uncut it makes part of the realty, & no man can have an action of Trespass but the proprietor of the Soil -

Traité des choses - §. 2. - To shew it is a personal right - to have the wood when cut down -
It is not a perpetual right of servitude of cutting all timber that may grow upon the Soil, or a right of using the Soil in any way that gives a perpetual claim - in this case the person who is entitled to the servitude

—

~~Pre~~ ~~Fortin~~ Desrivieres
~~Jos. L. St Germain~~ Hatt - } action for

Defdt by Exception states, that Pliff does not shew sufficient right of action - That there are five different counts for different sums of money, but Pliff says that only one sum was vested in Pliff as Tutor to Minors Robertson, & only one sum demanded by conclusion of Declon —
Declon does not shew what part of the rights of the widow of late Alexr Robertson was vested in the Minor Children —

Pliff. That action is regularly brought & sufficiently stated
That rights of widow, are sufficiently stated to have been wholly made over to Pliff

Guertin
v
Gipoulou

On Report of Experts –

Defendt. submits the point of Costs to consideration of Court – alledging that suit might have been instituted in the Inferior Court – at least Costs should have been divided. –

—

Fortin
Jos. L. F. Germain
&
Pre. Marchand
&
Jgn. Robitaille Intervs.

Action on ~~obligation~~ Deed of Sale –

objecn. to testy. of Laurent Labonté – in service of Defdt. –
& not admissible to prove any payt. above 100$ –
– only one Wits. to make out cutting wood on Defdt. land
– Quest. acto Interest on money assigned; which Pltff claims

Defdt. says he has justified the payts. made by him by suffte. proof
That Labonté is a competent wits. –

That Pltff cannot claim Interest as it was never conveyed by the Deed of Transfer to him –

Vente No. 286 – Interest due although not stipulated on Deed of Sale –

Intervention of Robitaille – That Interest arose to Marchand from day of expiration of term of payt. – L words – sans Interets – apply to the time ~~p~~ which was given to pay – now by Law Interest will become unless there be a stipulation to the contrary – and that Interest therefore arose from time of expiration of the day of payt. limited by the deed –

By assignment nothing but the debt is assigned, & no part of the Interest –

and plea of compensation is inadmissible

Monday 17th October 1808

Present

All the Judges

Nicht Austin
v
Groat
&
Cook

To set aside a deed of Sale ~~from~~ between Pleff and Defd being grounded on illegal cause, as being taken with a knowledge —

Defd — states that ~~action~~ new title has been obtained by a Sheriff's Sale of the property to Defd Cook —

Sheriffs sale purges all right of Pleff — as made of pr prior to Sale gt was dismissed —

Pothier Procedure — Decret —

Sale of Lands made since the action was brought

Rolland
&
Larose

On Obligation —

Defend pleads payt & Incd Demand — in proof of all which he refers to the Testimony —

Lawrence & Dayton
v
Blackwood & al
Trustees.

On action to account —

Debt established by Cuvillier to Pleffs —

& Plea pleaded by Defds ~~that~~ Pleffs are not subrogated in rights of Cuvillier not necessary —

property of Cuvillier in hands of Defds proved by their answers to Interrogatories sur faits & articles

That Deed of Cession produced by Defdts on faits & articles cannot operate a bar to Pltffs action, and if it did, ought to have been pleaded — & even if pleaded would not ~~to~~ bar the Pltffs. action —

Defdts states that Defdts are sued as Trespassers or wrong doers in retaining the property of Cuvillier & not in Capacity of Trustees — and therefore they plead that they are not liable, & had no property in their hands —

That by answers on faits & articles it appears that they hold no property from Cuvillier — ~~that~~ the property of Cuvillier Aylwin &c ~~, not of~~ Cuvillier alone was assigned over to their Creditors, & Defendts never held it but as the property of the Creditors —

That Defendts are accountable to the Creditors only — & can render no account of any property of A. Cuvillier —

Pltff replies — That he did not conceive it necessary to bring action agt Defendts as Trustees, as he conceived that the assignment under which they held the property was wholly void, not having been confirmed or homologated according to Law — & besides by the Deed, parties are bound to sign it before they are received to any benefit in the property —

The only fact is to ascertain whether the Defendts hold in their hands any property of Cuvillier — which appears by answers to faits & articles —

Perrault
v
Davaine } on acct. rendered –

That money stated in Mar. Contract

That Defdt. cannot claim a certain emplacement for her Dower as there was a Dower Cont. & a Douaire prefix stipulated, but the choice ought not to belong to Defendt. but to Debtor –

That Dower could consist of only 1/4 of the Emplacement and not the whole, as it was a Conquet of the first comts –

That Defdt. cannot have this Dower without rendering acct of the ameliorations made thereon ~~during~~ since the marriage –

Poth. Traité Douaire No. 78. 79. & No. 185

Childs part cannot be claimed by Defdt. as it is a punishment on survivor who does not make Inventory –

Art. Cont. 243.

as to fruits, whether she can be considered as a possesseur de bonne foi. Poth Presup.

That Defendt. claims whole of ameliorations, although made out of property of Community, of which Pleff are entitled to our half

Art. 241 –

Debts contracted by Defendt. since the dissolution of Community, can be chargeable only to her & no part of it to Pleffs.

Defdt. says that in 1768. argent Tournois was current in the Country until 1778. when Currency was changed –

Dower at option of Defdt. by express stipulation in Mar. Contract

That Dower is to be taken such as found at the death of the husband, & is not liable for any ameliorations made on it during the Community —

As to succession of Child who died, it belongs to Defendt — particularly as Pliff ask partage of Community as it stood at the time of death of husband, & not the Continuation of that Community

That Defendt — is entitled to fruits, as she enjoyed under the Testament of her husband, and it was a Common error that such Testaments were valid — and the Pliff silence for many years

That heritier de propres, is bound to account to the Community for the whole & ameliorations made on the propres. Dn

Logie. — } on Report of Experts —
Hunter & al }

Dft. Report informal — & not sufficient — as it does not report upon any matters referred to them except as to measurement of walls — and they have not made that measurement owing to the opposition of W. Hunter one of the Defendts, as they state — that opposition was owing to wrongful proceedings of Experts who insisted upon removing the wooden work & taking up floors to ascertain depth of walls, which was improper & unnecessary —

King
v
Baker — } On action agt. Defendt. for value of certain Timber delivered to him as Security for another —

Sewell for Defdt. — The evidence adduced does not support the demand, as to the quantity or value of wood claimed — but submits that an estimation be made by Experts on both points —

Sol. Genl. — That it being in power of Defdt. who got possession of the Timber, to contradict the Pleff. assertion as to the quantity of wood his silence in this respect is presumption agt him —

—

Blackwood
v
Cuvillier } On rule to shew cause why Exon should not granted agt Defdt. body, discussion being had of his property moveable & Immoveable —

Defendt. says, that Defdt has a certain house belonging to him which has not yet been discussed —

Continued till to morrow to bring up proof of title to house. —

Proof having afterwards been made that the house had been assigned over by Defdt. to Trustees on behalf of his Creditors — The Court ordered Defdt. to pay £12. to enable Pleff to discuss the property — on default of this an order for Capias. —

Molson
v
Peaken } On rule Nisi for Capias ad Sat. after discussion of Defdt. Estates real & personal —

Poth. Procedn. Crimi.

Defdt. says, that the law cited by Pleff has not force in this Province that Ordce of 1785 alone directs the proceedings to be had in this respect.

Rule made absolute —

Redaction of Code Civile

Burns et al
v
Jno Hamilton } On claims –

1. Saml. Backhouse – for wages – & 2d Note of hand – claims a priviledge for wages –

Plff. say, that a note of hand was given for wages & therefore no priviledge can be had on it – and that a demand is now made for both note & wages –

Johnson
v
Murray
et al. } On question of order de Collocation –

Tuesday 18th Oct. 1808.

Present

All the Judges. —

Perrault v Walade } action on Obligation & on an acct —

Defdt. says that before action he offered wherewith to compleat the 400# wh Pliff refused — as by act there was a sum of coming to Defendt. on that act

As to the acct says, that instead of 34 livres, he owes only 11 — having proved payt of rest. —

That he owes to Pliff only £12. 6 — qh was offered —

Pliff. That he admits sum of £12-6 to be balance due by Defdt but says it was never offered before the commencement of Sent

Demarchais v Franc. Ethier } On action on a promissy Note —

alledgd. by Defdt. that he recd. only 400#. instead of 600# for which it is granted —

Pliff heard on faits & articles —

Judgt. for Pliff

Marchand v Darche } Action for breach of Covenant, goods sold. & monies had &c on agreement for delivery of timber —

Darche — Defdt. pleads by Excepn that a sous sing privé agreement is not in law valid —

That the agreement ought to be double as there are reciprocal obligations to be performed by the parties —

Pothier. Obl. No. 47. also. No. 138. —

Repertoire — double Ecrit. —

Demsart vs Double Ecrit. — No. 1. to No. 5. —

Pliff replies — That parties are merchants, and agreement may be considered as a bill of parcels, and laws of evidence according to law of England ought to apply — & Transaction is of a mercantile nature. —

Defdt. answers, that Defendt. is a labourer, & not a merchant

—

Lecuyer vs Lefevre } Ore rule to shew cause why certain proofs should not be rejected from record & cause heard on merits —

Pliff is curator to absentees, & claims from Defdt. possession of a certain lot of land belonging to them —

Three acts produced by Defendt. rejected as faux, which defendt. now wishes to use as a commencement de preuve par ecrit to qt. Pliff objects — Poth. Obly. No 806 — to shew what a com: de preuve par ecrit, is, and the three acts rejected are made and signed by the Notary Lalanne only, except one of them which has the sig. of a witness but no signature of the parties — Poth. Ob. No 808 — to shew that such a memoire can be considered only as deposition of a witness —

That when act has been declared faux, no induction can be drawn from it in favor of party producing — Pro. Civ. p. 335.

No proof that father of Absentees ever sold the half of the land in question —

That act of Donation is void for want of necessary formalities in the execution —

Sewell for Defdt –

Says, that Defdt holds under titles made 20 years ago, & when he purchased received copies of acts of Sale in due form which induced him into an error as to their validity –

In proof that Glinel sold ~~half of~~ land by difft acts – ~~to Marassé~~ Laberge, he sold to Marassé, & Marassé sold to Defendt – under which acts Defdt came into possession

That Cens & rentes have been paid on the lands to Seigr for 20 years past – & receipts appear on acts themselves for Lods & ventes

Indt on one of those acts in qh present Pleff was a party in his own name –

That Pleffs demands continuation of land – but Glinel pere never had more than 3 acres in front by 30 in depth –

That Defdt has ~~laid out~~ made great improvements on the land, & if Pleffs succeed, ought to be reimbursed those improvements

Bedard for Pleff states that suit instituted in qh Lauger was a party, was in consequence of ~~Lafayn~~ having acquired a sufft title by prescription agt the heirs present. –

That Defdt ought not to have persisted in the validity of acts after minutes were produced –

That even if Glinel had sold half of land during Comts the other half remained, & the Children of Glinel on his death were entitled to half of the remainder

That acts of Donation could never have been made –

Mears v Randall } action agt Defdt to give a title to Pleff to certain lands under agreement —

Defdt says, that Pleff does not state sufficient in case to entitle him to his action — Pleff.

Proof ordered

Foretier v Pilon & Boileau oppt } On action en Garantie

Oppt made doc. of land to Jammes subject to certain reserves —

Pleff, obtained Judgt agt Jammes & seized Land —

Oppt. claims that land be sold subject to reserve — & has put her Garant Mr. Parement, who became Security for Jammes. That Parement now says, he cannot be at this moment called upon to warrant oppts right, as Oppt. is not trouble — which oppt. o

That oppt. gives up her claim for rente & pension, but claims her reserves, as 3/14 of land belonged to third persons not bound to Mr Foretier — & land esteemed at 3000# — by Foretier himself —

Beaubien for Pleff. says, that for a right merely hypothy. there cannot be an oppn. afin de charge, but only afin de conserver, that such oppn. can be only for a droit reelle or foncier,

That if Oppt. had claimed only her reserve of a Chambre he wd. have granted it, —

Rente hypothecaire is not such as can entitle party to her oppn afin de charge —

That oppt. had no right to impose burdens on land to prejudice of prior right of Pleff —

That if oppn. is ill founded must also be dismissed from her demande en Garantie.

N. Panet for Garant –

Cites cans. Cartier v Cheval. & Sasseville & Champigny oppt – in 1807.

John McKindlay v P Rottot. & J. Bt Bruyere & Vm Rottot oppts – to shew that where there is a prior right the party cannot constitute burdens on the land subject to that right –

Bedard for Oppt –

That reserves claimed are reserves d'usufruit for which her Oppn is well founded –

—

Roger v Rondin } On rule to shew Cause why P. Verbal & report of Experts in cause should not be set aside, and a new report made

—

Féré v Rolland } On rule to shew Cause why Cause should not be dismissed for not proceeding to call in certain persons ordered by Court –

Sol. Genl for Pleff. says, that no time is limited for bringing in heirs, & besides he cannot bring them in by writ under Ordce of 1785 – nor can such writ by Law be sued out

Hung
vs
Mondelet } Action by Pltff for her matrimonial rights —
The Defendt. as Curator submits case to Court

Lacombe
vs
Gauselin } Action for goods sold —
Defendt. admits pltff right — deducting a receipt —

DeHeirn
vs
Nowland } Action for monies laid out &c

Defdt by Excep. says that first Count in Decln states no suffnt ground of action — as from monies laid out by Pltff as Dr. master for provisions for troops he says Defendt. as pay master became bound to refund it

Pltff contends that it is the duty of Dr Mr. to provide for subsistence of troops, & duty of pay master to supply monies for this purpose —

Wednesday 19th Octr. 1808.—

Present

all the Judges.

No business done

Thursday 20th Octr. 1808

Present.

All the Judges.

Lapierre
v
Clavelle } Judt — of Distribn. — §

For different other Judgments of this day —

see. Register of the day. —

February Term. 1809. —

Wednesday 1st February 1809. —

Present
The Chief Justice, &
Puisné Justices. —

Dow
~
Wurdele } On an Evocation from the Inferior Court —
Pleff moves for hearing on right to Evocation —

Defdt. says, that the sum in contest was above the competence of the Inferior Court, although by Pleffs statement of the acct. the sum was reduced ~~under~~ by the Credit given by him to a sum below £11 —

As the sum demanded by the Pleff (£5. — was within the Competence of the Inferior Court — and as no provision is made by the Law for making evocations on matters of this kind, the cause was ordered to be remitted to the Inferior Court for further proceedings there — The Court however seemed to think that the Inferior Court could not take cognizance of the sums, or proofs to be made respecting them either on the debit or credit side of the account, if they exceeded £10 Sh —

Thursday 2d Febry. 1809. –

Present

– All the Judges. –

Lefevre
Savage – } action to obtain a partage of a Community –
Judgt. ordering account –

Account rendered, and hearing now thereupon. – In stating the account the Defendrs. say they were possessors de bon. foi & claim the fruits – this is denied by Pltff – The title under qh the Defendt. claimed the whole of Community was a nullity, & constitutes bad faith in Defdt – Poth. ~~poss~~ prescripn. No 28 & No 29 – another article charged in the account is for certain charges for the mutual benefit of the parties qh Pltffs say must be chargeable to Defdt. alone as being in possessn. of the premises –

Ross for Defdt – That Defendrs. title under the will was such as constituted good faith in the Defendt – and the fruits & profits, were not sufficient for maintainance of Pltff, who was an infant at the death of her father – qh he prays may be ascertained by Experts – The impenses such as a barn & stable built on the land fences & ditches made by the

Defd

Defend^t. are such as are for the mutual benefit of the parties as being impenses utiles & necessaires — see Poth. Tr. Com^t.

Pltff. admits the improvement made of a barn & stable, but not of fences & ditches, which ought to be made & kept up by every Possessor —

3^d — Interlocutor ordering the impenses utiles & necessaires made by the Defend^t. to be estimated by Experts, & also to ascertain since when the said Pltff's possess their part of 1^d immoveables ~~are in the poss. of Defend^t~~, and if the profits and revenues of the o^d part have exceeded the expenses of maintenance and education of the Pltff prior to her marriage

—

Friday 3d February 1809.—

Present.

All the Judges.—

Finlay vs Cuvillier & Trustees Oppts.—

Finlay sold a house to Cuvillier, who entered into partnership with Harkness & Aylwin, & became bankrupts — They made an assignment of all their property, & of the house in question to Trustees on behalf of their Creditors — The Pltff. having obtained Judgt. against the Defendt. for £300, part payt. on the sale of the house in question, he seized the house & advertised it for sale, which was opposed by the Trustees, who claimed the house under the assignment which had been so far executed that the house was now in the hands & poss. of the Trustees, contending that Pltff had no right but by an action en declaration d'hypothequé — It was contended on the part of the Pltff — That the Trustees were only the attornies of Defdt. & did not hold any property in the house & that the assignment did not operate any change of property —

The Court were of opinion to admit the opposition as the poss. of the house was in them they had a right by Law to compel the party to his action en déc. d'hyp.

Rolland
Foretier
&
Jos. Labelle Gart.
Tutor
&
Jn Bte Labelle ar. gt.

Action agt. Defdt. for cens & rentes, & several lods & ventes —
Exception pleaded by Labelle —

Gart. contests pltff. right to Lods & ventes on an Adjudication
gt. was made to Labelle himself as Tutor to minors, under a petition
presented by him to be authorised to sell it at the Church-door
for certain reasons stated in the Petition — that the purchase by
the Tutor in such a case is in Law wholly null and can produce no right of
Lods & ventes to the Pltff.

That he has reason to believe that on the purchase made by Jean
Bte Labelle, the arriere Garant, the lods & ventes have been paid
& for this requires that the Seignior be bound to produce his
Registers & Receipt books for his examination as to this payment
his right to this he states to be founded on Poth. Obl. No. 752. and
Prudhomme. p. 434. 435. & 436. —

o. 752

p. 434. 5. 6

That Defendt. ought to be held to pay a part of the Costs
in the Cause as he owes part of the debt for which the action
is instituted —

Pltff — That Garant cannot be admitted to invalidate his own
act, by saying that the purchase he made was illegal — That he
has sold & warranted the property in his own proper name —
That Seignior ought not to be bound to produce his Terrier — as
it is not regularly kept, being nearly a waste piece of paper without
any names of the present parties on it — contends that the
authority from Pothier, is not applicable — & that from Prudhomme
applies only where a regular Terrier is kept, gt. is not the case in
the Seigniory of St Eustache — and he contends that the Seignior
is

is not bound to keep a Terrier for the benefit of his Tenants. —

Quesnel for Defdt. says, that he ought not to pay any Costs or at most such expences as could be claimed in the Inferior Court —

Beaubien for arriere Gart — that on rendering his act to Jos. Labelle he gave in the copy of the deed of purchase qh he made of the land, on qh was the Seigniors Receipt for his Lods & ventes — and now claims that Jos. Labelle deliver back this Receipt, to enable him to defend the claim of Pleff for the lods & ventes of that purchase, or that the Ar. Gart — be discharged from his Garantie —

Bedard for Pleff — That the act of purchase by the Tutor is nul in law nor was it necessary for him to have pleaded it —

That Andegrave & Goguet ought to be admitted to profit by the beneficence of the late Mr Dumont as stated in his will, neither of them having effects to the amount of 100# & that this ought to extend to all persons owing rents, whether

Armour & Co
Dieffenback } action agt. Defdr. calling him a butcher, merchant and trader — Excep.r that Defendt. is known under none of the above professions, & that action ought therefore to be dismissed — Cod. Civ. art. 2. tit. 2. des ajournemens +

Pleff. That Pleff ~~called~~ gave Defendt. that addition which under the transactions wh him he had a right to give him — having endorsed a bill of Exch. he thereby became a Merchant — and from the testimony adduced, he may also be called a butcher as he assisted his father in that business — That Defendt. has pleaded a plea of minority whereby he waves his right of Excep.r to the other parts of the Excep.r as to his addition —

Defdt. — That plea of minority cannot operate agt. other pleas

Symes.
Sutherland
& Robertson.

Claim
D Ross — } on claim on Fortification Lands — by Barsalou by Intervention
Objected to claim that it was not made within the time limited by Law for claims being made — by 10t. Sec —

Barsalou — That Interventions may be made as in other cases provided the claim has been made in time — That the right of Intervention is specially preserved by the 4t. art —

— Intervention disallowed. —

Court were of opinion that Dfdt. had a right to make a pleading as to the domicile stated in first part of the pleading, but that the other matters regard the service of Sums. sought to have been heard by motion, & not joined with the other parts — Pleff. motion granted, for taking off the pleading from fyles wh leave to Defdt. to put in a new pleading as to domicile.

Saturday 4th Febry 1809.

Present

All the Judges –

M. Lse Robin, &c
Jos. Fagnan, Exer
& others

Judgt. dismissing the heirs of the late Frs. Lapierre from their action agt the Defendt. as premature the same being instituted agt. him before the expiration of the year and day allowed by law for the execution of the testament – That the widow alone has a right of action against the Executor to obtain an account from him of the community that subsisted between her and the late Frs. Lapierre, as the said Executor appears to have remained in the possession of all the property of the said Community as stated by the Inventory made, but that the action agt the other Defendants is irregular as they appear to have acted under the authority of the Executor – The Court also were of opinion that the Cession made by the widow of her rights did not bar her of the present action, which may be prosecuted either in the name of the Cedant or Cessionaire –

Symes
Sutherland & Cur
& N. Robertson

Action for goods sold to P. & N. Robertson as Partners — and question to establish Partnership between Pat.k & Neil Robertson — upon this, that by private contract between the parties, N. Robertson had withdrawn from the Concern before the transaction in question, but without public notice, or notice to the parties —

Ross Defd.s — N. Robertson — says, at the time the Credit was given he was not a partner of Pat. Robertson, & there is no proof of it on Record in 1800. P. & N. Robertson had entered into a P— but in 1801 ~~for~~ to the ~~dissolution~~ to the time limited, but they dissolved it by an act before a Notary — But the name of N. Robertson was never used or held out to the world as a Partner during the time the partnership lasted — Public notice of a dissolution of a Partnership not required by the law of the Country —

Cites. 4 Esp. N. P. Evans. v. Drummond. p. 9 —
Poth. Traité de Société. No. 157 — infine —

Lewell for Sutherland — joins in argument with other Defend.t as to Partnership He pleads further that Declaration is insufficient as no day or year is mentioned when Defend.t contracted the Debt alledged — as it is said only "in the month of March", without saying what year,

Sol. Gen.l — Curator is too late to make the objection — by allowing Plff to go into his evidence he has waived it — That day is not necessary to be stated on an action of assumpsit — That after Cause is set down for evidence & afterwards hearing on the merits, he ought not to be allowed here to avail himself of the Exception —

as to the Defdt. Robertson — That a Partnership did exist between the parties N. L P. Robertson under firm of P. R & Co — No public notice of dissolution — but same name of firm publicly continued same after as during partnership —

contends that the authorities cited are agreeable to the principle he lays down —

Johnson vs Lajeunesse } — Action for wheat stipulated to be paid on a Lease —

Defdt says — That there is no proof of a Lease by Pltff to Defdt — It is stated that Ph. Byrne acting for Pltff made a lease, but there is nothing to shew that Byrne had authority from Pltff to act — or to bind Defdt —

Rejoin Pltff — That Pltff has signed the lease — the Defdt. is proved to have had possession of the property leased — the present action shews Pltffs confirmation of lease —

Prays ~~that~~ Incidental Demand be dismissed

8th Judgt. for Pltff.

Vadnais vs Desroches } action for arrears of Rents & pension —

Defdt pleads mortgage on the land given —

Pltff replies that Defdt has been in possession

Defd. says, that Pltff sold to him in 1802 & there can be no prescription in his favor — That Defnd. had knowledge of the Mortgages which were notified to him by Mr Marchand the Creditor, & he has filed them in the Cause — That Pltff has allowed his Cause to sleep for 2 years, & cannot avail himself of what may have happened since it was commenced

Pltff, says, that Defnd. has peaceably enjoyed the land for 10 Years, & there can be no interruption of prescription but by legal demand — & none is proved Defd. has enjoyed land for 2 Years without paying any part of the Rent — which he owes even if there were mortgages on it —

Wednesday 8th Febry. 1809

Present
All the Judges

Jos. Leger
vs
Louis Picotte

On service of Process made on Defendt at six o'clock in the evening, after dark, when candles were lighted, the Court were of opinion that the service was regular, and that the practice in France in this respect has been abrogated by the Provincial Ordinance respecting the issuing and service of process — more especially as the identity of the Defendt person is not contested — and as he himself brings in the Copy of the process served upon him to prove the alledged difference in it from the original

—

Henderson & Armour
vs
Geo. F. Duffenback

On Exception pleaded by the Defendt. that he is a Labourer & not a butcher as stated in the Declaration. —

From the proof adduced it appears that the only trade or business used by Defendt — was that of a butcher in which he assisted his father and therefore generally known under that name — the Court dismissed the Exception —

Parker Gerrard & Co
J. & A. McGill & Co } On Pltffs motion that this Cause be tried by a Special Jury —

Objected by Defendt — That transaction between the parties is not of a mercantile nature — That conclusions of action are to render an account, there can be no trial of question for this purpose before a Jury —

That Pltffs conclude in damages, or that the Defendts render an account — all requisite for Jury is to find certain facts, then to Court to adjudge further thereon. —

Court — motion rejected — no trial by Jury on action of account case of Lymburner. vs McKindlay. —

Cuvillier
McDonald } On Defdts motion to ~~strike~~ out part of Replication — as stating new matter not pertinent to the Issue —

Ct admitted Defdt to answer to that part of Replication qt contained new matter, considering same as essential. —

Simonneau
Dupuis — } On action of Separation — Excep: by Defendt — that she was a minor — & further that she ought not to be impleaded without the assistance of a Tutor or Curator ad hoc. — That Pltff is a major. & Defdt a minor & in such case Pltff can have no action for seduction as stated under pretence of promise of marriage —

Bouyon. 1 vol. p. 10 —

Dict. Droit. vo Rapt de Seduction —

Denisart — vo H.

Pliff. The Defdt. is prosecuted for a delit, & in this case there can be no minority —

That Pliff did not know that Defdt. was a minor, and if it is necessary the Court ought to order the Tutor to be put in the Cause —

That action must lie agt Defendt. for the maintainance of the Child, ~~[illegible]~~ by Pliff

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Winkle foss
Loedel
& Blake —

on merits. —
On action of Separation for elopement & adultery — and to deprive Defendt. of all her rights under her marriage Contract. —

Pliff entitled to his action in this case for a Separation & to have his wife deprived of all her rights — (cites — (authorities)

That the name of Capt. Jackson the person wt. whom the Defdt. committed the adultery is not material —

Defdt. says — that she is accused of having committed adultery wt. John Montague Jackson — & the proof goes only to one Capt. Jackson — & that there is no proof agt her wt having committed any crime wt the person named in the Declaration —

Wits. No. 8. 9. & 10 interested —

The letter not proved —

Bedard, for Blake, the Tutor — says, that authorities cited do not shew that ~~Marriage~~ Contract, is absolutely null, where the interests of a third person are concerned, and it cannot be set aside in part —

~~Deshautels~~
~~Bedard~~ } Robitaille
~~Demarsd~~

M

Logie
Hunter } on ~~award~~ Report of Experts.

Defd. says, that Experts have not measured the mason-work although stated in their Report —

Gillespie
Auldjo
Brehaut } on rule Nisi — why certain papers filed by Brehaut with the account he filed, should not be rejected from Record —

Pliffs say in support of rule that no papers ought to be admitted beyond the acct — & the papers filed tend to shew transactions qt ought to have been pleaded and an opportunity given to contravene them —

Brehaut, says, that the papers filed have a necessary reference to the account filed —

Court — The exhibit No. 2. filed under the Interlocutory, not having any reference to the account ordered, the same to be taken off the fyles. —

Lawrence & Dayton
v.
Blackwood & al. } On rule to shew Cause.

That account contains no statement as required by the Interlocutory Judgt. — it being merely a balance sheet without description of property of any kind —

Defdts. That they ought not be bound to give any other acct. as it contains a statement of all the property which has come to their hands —

Ordered that Defendts. make an addition to the account, stating that the ~~account~~ same contains the whole of the property which came to their hands as Trustees &c —

Perrault.
v.
Savage. — } Action on a Promissory Note. —

Defendt. says, that the person who made the note owed nothing to the Pliff, who can give no right of action agt. her — as it was for & on behalf of her son a minor that it was made and to be paid out of the Minors property —

Robitaille.
v.
Marchand.
& wx.

Gr. Com. art. 273. Gl. No. 5.
Ib. Ib — — No. 8

action agt. Defdt. on his note of hand
Defdt. says that the Donation under gt. Pliff claims is insufficient, as there was no tradition of the Créance in question, wh. tradition is necessary for the validity of an act of Donation — cite. 2 Arzon. ch. 11. p. 292. Lacombe. vo. Donation. parte 2 - Sec. 2. No. 12. Ferrier. Comm. art 273 — Pothier. Don. Tom. 2 page 463. 4to — & page 466 — — act of Donation ought to have been signified to the Debtor — That Debtor is liable to the heir without this —

///

That wife ought to be liberated from the action as in the writing on qh the action is brot. the wife has signed, but without it being therein stated, that she was authorised by her husband, qh is absolutely necessary

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Pltff. That there is mention made of the particular debt of Defndts in the Donation — That as to the notice to the Defndt by signification of the Donation, it was unnecessary, as the whole right was conveyed to the Pltff — & Defndt had no interest for such signification — That universal Legatees cannot be bound to such signification, — Trustees of Bankrupts never make such sign. to entitle them to their action — That in case of Don. of Real Estate, ~~tradition~~ is necessary, but where a bare right is conveyed, all that can be given is the title qh gives the right — cites Rep. vo Donation 174 to p. 184. — 2 Bouyon. p. 95. — That where an stat of the things given is annexed to the Don. it is by ord. 1731 held sufficient.

That the wife must be considered as authorised by her husband where she has signed with him, & the note is drawn in the plural number nous.

Defdts. That the law is express that the signification of the Donation of the note in question, is necessary to be made in the life time of the Donor — cites Note in 2 Bouyon. p. 112. Edit. 1770

III. That signification is necessary to be made to the Debtor, during the life time of Donor — Ferriere Gr. Com. art. 273. Glos. un. No 19.
Lacombe. vo Donation. part. 1. Sec. 4. sur l'art. 15 de l'Ordn de 1731
Ib. —— vo Transport. No 17. —
Denisart. vo Donation No 22. No 23. No 34
Poth. Don. entre vifs. vol. 2. p. 463 —

Thursday 9th. Febry. 1809. —

Present.
All the Judges.

Fraser

No business before the Court. —

Friday 10th. Febry. 1809

Present
All the Judges.

Forbes. v. Jackson } On an attachment in the hands of Defdt. of his effects upon a Judgt. and on Pltff. affidavit, that Defendt. was about to secrete his effects —

Defendt. moved that Pltff be held to prove that he the Defendt. was about to secrete his effects, and that affidavit of Pltff alone was not sufficient. —

The Court were of opinion that when a party makes an affidavit positively of the fact upon which an attachment, the law requires no further proof, as must be considered as sufficient — motion dismissed —

Flammand
v.
Chevallier

On motion agt. Dumont and Gagnier, witnesses summoned by the Pltff who had refused to attend and give their evidence.—

Sec. Tit. 22. sec. 8. Code Civile — Fer. Dic. vo Temoin — Demsart. vo Enquête par Ecrit

Ordered by the Court that each of said witness be condemned to pay a fine to His Majesty of ten pounds, and that they be ordered to appear in this Court on the 14th inst to give their evidence in the Cause, under pain of being reputed guilty of a Contempt to this Court and liable to attachment —

~~Symes.~~
~~v.~~
~~Sutherland~~

Nowland
v.
Martin

On Defds motion that matters in contest be sent before Arbitrators —

Defndt. says that parties are brother officers, may be compared to case of relations, where Court have power to send contest to arbitrators — Poth. proced. Civ. —

Rep. Jurisp. vo arbitrage. power of Judges where they see necessary to send matters before Arbitrators — See also arbitre" —

1 Pigeau. p. 246. — to same point — cites cases before the Court —

Sol. Genl. denies that the Court has the right to send the matter before Arbitrators — the case not being fit for it, being a question whether Pltff is liable for certain monies charged by Defdt. agt him, & not to ascertain the quantum qt. alone is fit to be left to Arbitrators — & not the question of right

Carson
v
Demers — } Action to render account —
Parties agree to name Experts —

—

Jewett —
v
Farrar — } On merits —
action for breach of Covenant —
alledges that he has made proof of his damages — as rule of estimation cites. Poth. Ob. No. 159. —

159

Defdt — That Contract was in suspence till two persons had signed it for satisfaction of Pltff — as they did not sign the Contract was not compleat between the parties, & not obligatory upon either of them — Pltff. makes a memdm — respecting these persons, accepting some accommodation on the security, but this mem. should have been signed & agreed to by all the parties, & no alteration could be made in the Contract by the Pltff alone. — —
No obligation that Defds. should furnish Potashes at all hazards, but only on condition of a manufactory being established at Hemmingford — nor is it alledged in the Declaration that such manufactory was established, or any potash manufactured —
Offers to reimburse the money advanced on the Contract

Pltff. — That Pltff alone had a right to claim the Security, and his accepting one person instead of another cannot affect the Contract between the parties, nor exonerate the Defendr. from their

undertaking

undertaking, for which they are liable had no security been given. That Defend^s undertaking is express & not conditional according to the construction of the agreement — The acceptance of money shews that Defend^s were bound, & their not erecting a Potash-manf^y cannot excuse them —

Donegani
" &
Normandeau

on rule, why Excep^n à la forme should not be taken off record as coming ~~action petitoire~~ in too late —

Def^t says, that the Excep^n goes to the whole Decl^n and is in nature of a plea in bar —

Pl^ff says that Excep^n is à la forme.

Court ~~consider~~ reject motion, considering the Exception as a plea to action

De Hern. —
" Nowland

Action for monies paid &c —

On question whether case shall be referred to Arbitrators for which Pl^ff makes a demand owing to the accounts between the parties —

Defend^s agreed to name Arbitrators — ordered ~~for~~ to morrow

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~~[illegible]~~
~~[illegible]~~ —

Saturday 11th Febry. 1809.—

Present

— All the Judges.—

Symes v Sutherland & al'. } On question whether an amendment can be allowed by Pliff in his Declaration, after Issue, argt. deliberé & Ct. being on point to give Judgt.—

Pliff— Injustice to Pliff if not allowed to amend— That parties have severed in their defence— one demurs— the other pleads to the merits— The Defdt. pleading Demurrer has waived it by his subsequent proceedings.—

1. Str. p. 21— Cole v Hawkins— defect of form amended—
2 Doug. p. 683. —— do—

2 Tidd. p. 637. To shew that is entitle to amend after argumt.
1 vol. p. 328— Doug.— ~~Jackson v Hassel~~ Pollenbach v. Hawkins—
2 Sellon. p. 581— amendment when Justice requires—

Resn. vo— Demande. p. 373— Demande may be amended en toute etat de Cause—

Plea irregularly ~~pleaded~~ drawn—

That even if Judgt. be agt. him on Sutherland's plea he is entitled to his Judgt. agt the other Defendt.—

Com. Dig. p 406.— Pleader

Sewell for Defd Sutherland —

There is nothing by which the amendment can be made

Plea must be considered as to the merits — and after plea & proceedings on the merits there can be no amendment —

Barnes. King v. B. Carlisle. —

Woodman v. England —

Repre. vo. Deliberé —

Ross. for other Defdt —

That under Plea — he is entitled to take advantage of the defficiency of Pliff. Declaration —

Stating that at the time the Defends. were Partners — & no time is mentioned — is ~~defficiently~~ not in form but in substance also —

assimilates to motion after verdict by Jury — qt. cannot be received

Pliff — The Defends. by allowing Pliff to go into the merits of the Demurrer, have waived their benefit — as proof does it away

That after verdict all defects in form are cured —

Nowland v. Martin } On hearing as to question of sending parties before arbitrators —

Pliff — argues that there is no appearance of any proof of

a

right of demand agt. Pltff on part of Deptt. and without this the right to make a demand, ought not to be left to Arbitrators —

Payan — ~~Chaillé~~ Chaillé Chaillé Oppost —

On opposition of Chaillé ~~to sale of land~~.

Payan having obtained Judgt. agt. Chaillé, sued out Execution thereon and after discussing his moveables seized his lands, which were sold and adjudged to Payan as highest bidder — under this adjudication but without having paid the money or obtained a title from the Sheriff Payan enters into the possession of the land — In the mean time Chaillé had obtained Judgt. agt. Payan for a greater amount than what he owed Payan — During Payan's possession of the above land, one Lacroix, his Creditor by Judgt. sued out Execution & seized the land as Payan's property — To prevent the sale of the property on Lacroix's Execution, and also the granting of a title by the Sheriff to Payan, Chaillé makes his opposition, & says, that he is entitled to set off his Judgt. agt the Debt he owed Payan, & to have his lands restored, as Payan had # —

Lacroix v Payan. & Chaillé

Lacroix for Payan — Land adjudged to Pltff for balance of his Debt — and opposition of Chaillé to prevent

Sheriff

never become the lawful Propr by paying the amount of the adjudication and obtaining a title from the Sheriff.

Sheriff from giving him a title ~~in consideration of~~ ~~the~~ opposition is irregular. If money not paid Oppt had a right to demand a new Sale at folle enchere of Pltff — but has no right to prevent Sheriff from perfecting Payan's title to the land by granting him his deed —

Viger for Oppt that in case the Debtor can produce a receipt for his debt before the Sale of his property is completed it ought to stop all further proceedings on that Sale & the Judgt rendered in favor of Oppt is equivalent to an acquittance of the Debt he owed the Pltff —

White
Quackenboos } action for damages for the illegal execution of a writ of Execution on a Judgt obtained agt Pltff —

Defd says that death of one of Whites not proved — No proof of damage — proof of delay not admissible by verbal testimony — proof of Sale of Cattle also inadmissible — as sheriff's return not produced — advertisement for 11th was up for 2 Sundays see Kemp's testimony —

John

Wednesday 15th Febr 1809 –

Present

All the Judges. –

Symes in Sutherland & N. Robertson } Ct. allowed Pltff to amend his Declaration on paying Costs of Sutherland & allowing him to plead anew, also on withdrawing all the verbal testimony in the Cause on the Issue between him & N. Robertson paying Robertson his cost on taking that testimony. –

Jewett in Farrar – } Judgt. for damages –

Mr. Monty in Jos: Goquet } an action for Seduction of Pltff, & damages £100 –

Felicite Boileau, midwife, appellée pour accoucher la Dem. le 20 février dernier – l'a accouchée d'une fille –

Jean Bte Hebert, sait que le Def. a frequenté la Dem. pour un an comme une personne qui ~~entendait la~~ voulait se marier avec elle, Def. a avoué au tem. qu'il avoit eu affaire a la Dem. & ce avant qu'elle fut accouchée –

Joseph Lebeau, sait que le Def. frequentoit la Dem. que pendant ce tems le Def. a dit au tem. d'avoir baisé la Dem.

Et. Dufresne

Dem. & ce pendant sa grossesse, il entend dire qu'il auroit eu affaire à la Dem. —

Maurice Guestin — sait que depuis un an le Def. frequentoit la Dem. & il a dit qu'il aimoit cette fille assez pour se marier avec elle, & ce vers le milieu de l'année derniere — con. la Dem. pour une parfaite hon. fille, & la maison de son pere ou elle reste une hon. maison — n'a jamais entendu mal parler d'elle avant qu'elle fut frequentée par le Def.

Demande s'il auroit eu quelque conv. avec le Def. touchant la grossesse de la Demdse. & si le Def. lui a offert de l'argent pour venir deposer en Cour qu'il auroit eu affaire a la Demdse —

dit que ce printems dernier, le Def. a offert au Dep. une portugaise pour dire en Cour que lui tem. auroit eu affaire a la Demdse — ce que le tem. a refusé — x^d. Dit qu'il a eté poursuivi

objected — observed, that Wit. had been prosecuted by Defendt. for having sd. Unpublished, that Defd. had offered him money to give evidence agt. Pluff & to say that Wit. had had carnal knowledge of Pluff that Wit. was upon this prosecution condemned

Ct. said it might go to Wit. credibility but not to his competency. —

Jos. Davignon — L'hyver passé s'est trouvé dans un bal chez Jos. Goguet le Def. le tem. a remarqué à sa fem. qu'il croyoit que la Dem. alors presente etoit grosse, & ladessus le Def. a dit, "oui la sacrée garce elle en a pour son Compte" —

Pre Amelot, sait que le Def. freq. la Dem. & le bruit etoit qu'il devoit se marier avec elle — Que le ~~Def.~~ tem. a dit au ~~tem.~~ Def. qu'il croyoit la Dem. ~~etoit~~ grosse, oui dit le Def. & on dit que c'est Jos. Goguet, et depuis que ~~je me suis~~ observé cela, je me suis retiré de la maison. —

Jean Labourie — dem. voisin du pere de la Dem. — connoit sa maison pour une hon. maison — con. la Dem. elle s'est toujours bien comportée — Que la Dem. va sur 24 ans —

Croit le Def. plus jeune que la Dem.

Jean Bte Balthazar, voisin de la Dem. la maison de son pere honnete, & la Dem. a toujours eu bon caractere & la Dem. va sur 24 ans — Ne croit pas le Def. en age de majorité —

Lisette Larocque — etoit present lors de l'accouchement de la Dem. — qu'elle a eu une fille — a toujours connu la Dem. pour une hon. fille — que pendant le mal d'enfantement la Dem. a declaré que c'etoit le Def. qui etoit le pere de son enfant —

X^d —

Que le tem. n'etoit pas present lorsque l'enfant vint au monde mais est sortie pour chercher des hardes pour l'enfant, qu'a son retour elle a trouvé l'enfant né & la Dem. dans la situation d'une fem. qui vient d'accoucher —

Felicite Boileau was again called, to prove who the Plff charged with being the father of the Child at the time of the delivery, — dit, que la Dem. a été bien malade, & que le temoin lui dit, qu'elle ne seroit pas debarassée avant de declarer ~~qui~~ etoit pere de l'enfant ~~dit~~ que pendant les douleurs de l'enfantement, elle a declarée au tem. que c'etoit le Def. qui etoit pere de son enfant. —

Defence

Dom^que Bonneau, voisin de Monty — Que le dernier de Mai 1807, au soir, il s'est rencontré avec la Dem. ~~qu'il~~ Sous du Def^r — chez son pere, ~~et~~ il avoit arreté pour demander quelqu'un pour l'aider à la faire marcher — que la Sous du Def. s'est offert, & la Demandeur a dit qu'elle vouloit aller aussi — Qu'en chemin la Demandeur a demandé au temoin, si la vache ~~[illegible]~~ etoit pleine de son premier veau, qu'il a dit, non la vache a dix ans, & je crois qu'elle a eu

7 ou 8 veaux — ch-bien, elle a fait plus que moi, parceque je n'ai que mon premier — Que vis-a vis la maison d'Et. Dufresne, la Dem. a encore demandée si la vache etoit en chasse, a quoi le temoin a repondu qu'il ne le croyoit pas parcequelle etoit trop maigre — ladessus la Dem. a dit ch bien je suis plus qu'elle, parceque je suis pleine de ma premiere veau & je suis en chasse encore. —

x

Dit. que la fem. du temoin etoit avec lui, aussi la Soeur du Def. Josette Gofaut & Mag. monty & la niece de la Dem, lorsque la Dem. a parlé comme il vient de dire —

Marie Mag. Bachant, fem. de D. Bonneau dernier temoin presente avec son mari le soir du dernier Mai 1807. ayant eté pour rencontrer son mari qui etoit parti pour chercher sa vache, & confirme le temoignage de son mari pour la conversation de la Demanderesse — Dit, que le tem. a fait reproche a la Dem. qu'elle avoit la bouche salle, —

x.

Sait que c'etoit le dernier de Mai, comme c'etoit une vache de louage, que l'on avoit depuis le premier Juin jusqu'à la St Michel & le 31 Mai on a eté la chercher — ne frequente pas la Dem. — seule fois qu'elle a eu de conversation avec elle — & ne peut rien dire de sa Conduite. —

Michel Bouthillier — 2e. voisin de la Dem. a eté quelques fois chez elle — y a vu chez son pere une veillée ~~avec~~ coucher avec un nommé Michel Berard dans un lit, ce vers la Tousst. de l'an 1807. Que ledt. Berard restoit chez le pere de la Dem. Qu'il a vu la Dem. dans les Cantines plusieurs fois, qui buvoit avec les Bastonnois & les gens de Cazes qui descendoit par la — & la vu se faire caresser & embrasser par ces gens & paroissoit bien content, & la Dem. de son coté prenoit ces Bastonnois aussi de la meme maniere — a vu ceci

trois ou quatre fois — & les jeunes gens faisoient une risée de sa conduite —

x°

N'a vu la Dem. couchée avec Mr. Berard qu'une seule fois et qu'ils étoient abreullés sous une couverte, — c'étoit vers les 10 ou 11 heures, après la veillée —

René Bouthillier pere du dern. tem. et est 2e voisin de la Dem. en avril 1808 étoit à une noces avec la Dem. & y l'a vu boire a plein verre quand elle pouvoit — L'a vû sur les genoux d'un jeune hom. elle étoit a moitié saoule. & s'entretenoit de sottises avec lui — a suivi le tem. jusqu'chez lui, ou elle a crié à un jeune hom. nommé Piccard présent, il faut que tu me mene chez Hebert le Cantinier, il a refusé — que le tem. a dit au garçon de la mener chez son pere ce qu'il fit — Blamant la conduite de la Dem. il a defendu ses garçons d'aller chez le pere de la Dem — connoit le nommé Mr Berard qui se retire chez le pere de la Dem. N.

x°

Qu'en sortant des noces il étoit chauffé un peu, mais pas en train & sait bien ce qui s'est passé —

Augn. Bouthillier, a vu la Dem. dans les Cantines boire avec les Bastonnois & des passans, — se mettre sur leur genoux, & les embrasser — Qu'elle a voulu prendre des libertés avec le tem. voulant le prendre par les parties honteuses en disant qu'il étoit cheud. — Que le pere du tem. l'a defendu de frequenter la maison du pere de la Demoiselle —

Charles Nolin dem. à St Luc. a vu la Dem. à la fête de St Luc en Octobre 1807. dans une Cantine — que vers le soir elle etoit entouré avec des jeunes gens, et ~~pas comp~~ portoit pas comme une hon. fille, on la serroit & prenoit ses tetons, & ce devant le monde —

Franc. Lacombe — de Ste Therese — demeure ~~dans~~ une maison qui appartient au pere du Defr — a vu la Dem. dans les Cantines se divertir, ne peut dire qu'il l'ait vu faire du mal —

Qu'ils dansoient dans la Cantine lorsqu'il a vu la Dem. & il y avoit dans le tems beaucoup de monde —

Here the Defendt. closed his defence —

The Pleff moved to examine witnesses to rebut the testimony adduced by the Defendt. — which was granted —

J. Bte Hebert — being brought up a second time — says, Que lorsque Jos. Bonneau est venu pour chercher sa vache, chez Noel Ainse la Dem. n'a pas suivi Mlle Goguet pour l'aider a conduire la vache, mais a restée en compagnie avec le temoin — ceci etoit ~~vers~~ le printems de l'anne 1807.

Adelaide Hebert dit qu'elle etoit chez Noel Ainsse lorsque Bonneau a passé avec sa vache en Mai 1807, mais la Dem. qui etoit alors la avec autres jeunes gens, n'a pas suivi qui passoit avec sa vache Bonneau, mais a toujours restée avec les autres personnes chez Noel Ainse —

Noel Ainse fils — Il s'est trouvé chez son pere en Mai 1807 avec les deux derniers tem. & plusieurs autres Jeunes personnes, lorsque

Bonneau a passé avec une vache – l'a vû passer la maison mais la Dem. n'a pas suivi Bonneau, mais a resté ou elle etoit avec les autres Jeunes gens – Que Joselte Goguet etoit la, & crois qu'elle est partie dans le tems que Bonneau passoit – Que la Dem. etoit assise à coté de J. Bte Hebert & le tem. etoit ensuite de J. Bte Hebert à ce qu'il croit, mais bien pres – assis sur une pièce au bord de la cote –

Jos. Detroismaisons Dr. Piccard – etoit aux noces dont vient de parler René Bouthillier – Il ne s'est point apperçu que la Dem. s'est mal comportée ce Jour la – Les deux jeunes gens enfans de René Bouthillier se comportent toujours mal, & se font maltraiter dans les compagnies – sont comme on dit malengueulles –

Connoit les Bouthilliers pour des honnetes gens –

Genevieve Tetro, – s'est trouvée aux memes noces dont a parlé Mr René Bouthillier, & le soir elle est partie avec le temoin que tout le tems elle se bien comportée à ce que le temoin a pu voir – Que le bruit court que R. Bouthillier va marier une de ses filles au Defr. & elle sait que le Defr. va la voir souvent – Que les enfans de Bouthillier

Defendt. called up the following witn

Jos. Davignon, dit que Bonneau est un parfait hon. hom. & sa fem. une hon. fem –

Louis Joubert – connoit Bonneau. en est voisin depuis son bas age, un hon. homme – & sa fem. est hon. fem. –

Que la Dem. a toujours passée pour hon. fille, jusqu'a ce moment – les enfans de Hebert passent aussi pour hon. gens – Les enfans de R. Bouthillier passent pour etre chicanneux et mal engueuillés

André Chalous – Que Bonneau & sa fem. sont hon. gens ~~est un hon. homme et sa femme~~

Michel Berard, admitted by the Pltff – Qu'il n'a dans aucun tems couché ni fait du mal avec ~~elle~~ la Demdse

Qu'il se retire chez le pere de la Demdse – Qu'il n'jamais couché ni habillé, ni deshabillé dans le meme lit avec la Demdse

Verdict – £65 – dam. & find def pattn of Child