— N°. 3. —

Note Book. —

from 15th Febry. to 1st June 1809.

1

Wednesday 15th February 1809.

Present

All the Judges.

Bourdon & Deshautels } Action for recovery of monies on a Transaction between the parties executed before Notaries — Pliff. says, that his Case is made out by proofs before the Court —

Defdt — That Pliff was bound by the Transaction to withdraw from Court the Execution which he had sued out agt the Defendt — or to declare at least before the Court that he had received satisfaction thereon. to prevent any further expences to the Defendt thereon — That Pliff not having done so, he is not entitled to his action for the recovery of money on the Transaction not having complied with his part of it — Claims compensation for an order on Pliff from Mr Cartier to whom Pliff was indebted —

Pliff. replies, that he could not withdraw the Execn as it is a record of the Court, but by ceasing to proceed on the execution he has sufficiently complied with the transaction — That Pliff is not bound to accept or to pay Mr Cartier's order. —

Defdt — That Pliff should have done some act to shew that he discontinued all further proceedings on the Execution

2)

Thursday 16th Febr. 1809.–

Present

All the Judges.

Burton
Phelps

On Pltffs motion for a rule on one Brisbain to shew Cause why an attachment should not issue against him for having removed out of the possession of the Guardein and without his leave part of the property seized under the writ of attachment sued out in this Cause.– In support of the motion the Pleff filed an Affidavit of the Guardein stating the fact complained of.

It was objected that as the Sheriff, who is the responsible person, has made no return to the Court of the fact complained of, nor made any complaint thereon, the motion is irregular as the said Sheriff may have given permission for removing the property in question.–

Court– The motion granted, the fact stated by the Guardein

(p. 21)

3)

Alex. Dubois
In M. Noreau

On Petition praying ~~for~~ a destitution de Tutelle.

Bedard for Petr

The ground of Petition, that Noreau was appointed by cabal and insidious contrivance on his part, and without due notice to the relations of the deceased.— refers to the depositions of Lafricain & other witnesses heard on part of Petitioner— Objects to the testimony of Latour, as the principal mover of the appointment and a person interested in the business, being actuated by a promise of ℔ he had from Noreau to do the notarial business of the Succession.—

Beaubien for Noreau — That testimony of Latour is corroborated by other witnesses — That testimony of Lafricain should be rejected as evidently interested — That there is no proof of any interference on the part of Noreau to be named Tutor, appointment made by opinion of the majority of the assemblée, ratified by the Judge —

Viger for Noreau.

That Latourelle, the Petr was the person who presented the Petition to the Judges for the election of a Tutor, & voted at the assembly & he is not in Law more entitled to the appointment than Noreau. That there is no proof of any improper management on the part of Noreau, who is admitted by all the witnesses to be a man of property and of becoming conduct —

Sec. 4.

Bedard for Petr replies that there is proof of an improper interference on the part of Noreau, as well as of his son in law who solicited the votes of the persons present at the assembly.— The two points on ℔ Petition is founded, are, 1. Cabal on part of Noreau to obtain the appointment — ℔ — 2°. Enmity to the Deceased. Both which points are proved.—

cita. Lacombe — vo — Tuteur. Sec. 6. No. 5. — Sect 10. No. 7.

4)

Declaire v Marven —

Action on Promissy Note —

Defendant pleads non. ass. & sets up an Incidental Demand for a title to land sold — The Note being granted for a land sold by Pluff to Defendt. That Pluff refuses to grant a title although demanded — That Court ought to compel Pluff to execute a Deed & to pay Costs —

Pluff — Says, that she never refused to grant a title, nor was it ever demanded — That Defdt. is in possession since the time he made the Note — &

On Informn of Stearns & Claim of Bingham —

On claim of Abner Bingham to horses & ~~Waggon~~ Waggon seized by the Informt.

Ross. for Claimt — says, that Claimt. is a common Carter, & took up the seizable article at Le Labas to carry it to Lafourche

Sol: Genl. That none of the facts stated in the Information are negatived in the Claim — nor are there sufficient facts stated therein to exonerate the horses & waggon from seizure — The Tobacco being found in the waggon is sufficient to warrant the seizure & forfeiture. Order of C. of 1797. p. 11 — The words in the act are disjunctives, found or imported — It is also a fact stated that the

Puncheons
~~Barrels~~

Puncheons ~~casks~~ having been seen and permitted to pass by the Officer of Customs at St Johns, he the Claimt could not suspect anything improper or illegal — insufficient. The Statute is general — every person must be careful not to put any seizable article on board of their vessel, boat or Sleigh without being liable to seizure. That the imposition on the Custom house officer that the puncheons contained only Potash, & not Tobacco, makes the fraud the greater —

Ross for Claimt —

That there is a discretion to be used by the Court in explaining the law, particularly in this Case, where they are required to judge of the Circumstances & probable cause of seizure. That the article being passed by the Custom House officer is a sufficient authority for Claimt. to carry the article into the Province

(p. 9)

Porter — vr Marston

On Plea — That Pltff is an Alien, & cannot maintain his action for the recovery of real Estate in this Province. —

Pltff. objects, to the sufficiency of the testimony adduced under the Comn. Rogr. No proof that the Comr. or Clerk took the oath required before proceeding to the examination of Witnesses nor is any thing made out from the testimony that the Pltff is an alien — That Defts have no right set up this plea, it being the business of the Crown by inquest to try this point.

6)

Defts. That Plea is well founded, as no alien can acquire — 1 Com. vo. Alien. (C 4. 5). An alien cannot bring a real action — Ib — vo. Abatement. (E 4) good aft. an alien's action —

That confirmation of an alien's purchase will not make his title good (Ib. C. 4)

That Pliff not recognized as being a subject by the Letters Patent granting the Township of

That the Com. Roq. has been regularly executed — The proof under it very strong to shew that Pliff always was & still is a Citizen of the United States, & he has adduced no testimony to the Contrary —

Sewell for Pliff. Pliff born before the Revolution in America & therefore a subject of the King — the Independency of the States does not make him an alien —

St. of 1784 — allows such subjects of King as chose it to come from the United States and sit down in his other Dominions on taking the oath of allegiance — The Kings Instructions are general that all persons coming from the U. S. taking the oath of allegiance shall obtain lands here —

Decarry vs Demers

Action agt the Defdt. as superior of the Community of Recollets, for work & labor done for the profit of that Community, & upon an agreement with one Petrimoulx at the time the Superior

Defts. That agreement made with Petrimoulx as an Individual no proof that he was either Procureur or Supr. of the Community, & is not bound for the debt —

Dec 14th —

It appearing that the Commissioners had signed the oath required to be taken by them under the Rules of Practice, but it not appearing by their Return that the said Oath had been regularly administered to them, — The Court thought it advisable to allow the Return to the Commission to be amended stating that the Comrs. had been duly sworn

7)

Perraret vs Savage — } On Promissory Note — hearing under proof made of the Note —

Defdt. says, that Plff cannot maintain his action as Defendt. on the note, it being given by a third person for the debt of another who was a minor. — That Plff does not state that the minor had a succession, & was sufficient, & that it came to the hands of Marie St Ives who signed the Note — That Marie St Ives had no authority to bind the Succession of the minor or contract a Debt for ~~them~~ — The Minor is the person now sued, and he has a right to object to the debt so contracted —

Plff. says, that as holding the property of the person who signed the note he is liable as far as that property goes, & the action could not be brought otherwise —

Dufresne vs Vinet — } Action (on Evocation) for damages for cutting wood on land in the possession of Plff. —

Ross for Plff. That proof of the facts alledged by Plff is clearly made out and the damages made out, & on it he claims Judgt —

Parent for Defdt. — says, that Exceptions pleaded have not been dismissed — That the prop. of soil is in one Pepin, the Plff has only the Coupe de bois on the land — That Plff has no right of action, as he is neither prop. of soil, nor in possession of it — By evidence a certain route, called route de Pepin, is known to be the boundary

8)

between the parties. That wood is on the other side of that route and in the poss. of Defdt —

Moves that testimony of Ant. Pepin may be rejected, as he is brother of the person who claims to be Proprietor —

Sol. Gen. for Defd — That action ought to have been brought by the Propr. as the injury if any is done by him, & he may still have his action for cutting the timber on the land —

Drigen, counsel for Pltff.

As usufructier, the Pltff is entitled to his action for injury done to the thing of which he has the usufruct

That Ant. Pepin is a legal witness — as he has no interest and as his brother is not a party in the Cause, he is not related to any of the parties in such manner as to exclude him —

Labelle — vs Boutron

On award of Arbitrators. —

Defendt prays that ~~affidavits~~ be communicated & to impeach the award — Granted.

9/

Friday 17th Febry. 1809.—

Present.

All the Judges.—

On Informn. of Stearns. — and Claim of Bingham } (p. 4) Interlocutor ordering proof. p. 50.)

Labrimouille v Noreau, Tutr } Action agt Defendt. as Tutor to minors Miloni for an alimentary pension for a bastard child of S. Miloni —

M. Vigé. for Pltff. Pltff was named Tutor to the bastard child and as such claims the allowance of £20. ℔ ann for the same — That he has made proof that Child belongs to Miloni —

Vigé for Defdt. That Defdt. could not agree to pay any pension to the Child, having no authority for this purpose — Offers to take charge of the Child to exonerate as much as possible in future — & for the past he offers to have the allowance to be made to the Child estimated by Experts —

Pltff — The Pltff having had charge of Child during the life-time of Miloni, ought to have the care of it & obtain an allowance for same —

10)

Globensky
vs
Gresenger
Costs

On Report of Arbitrators -

Pltff - That arbitrators allow charges in favor of Defendt which are not in the amount filed by him - to this Pltff object -

Defdt. That from the length of time since the bridge was built the Defendt. had made omissions in the amount to his prejudice which the arbitrators in their equity thought fit to allow him, as they had the power to disallow any extra charge That considering the balance, Defdt. thinks that he ought not to pay Costs, having acted in good faith, and as a public Officer -

Pltff - That the delay was occasioned by Defdt. ought to pay Costs -

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No. 55.

Rolland
vs
Larry -

Action for Lods & Ventes due on Land occupied by Defdt -

Pltff. That Land had passed through different hands by Sales upon each of which mutations Pltff claims Lods & Ventes - Receipt by Larry, is rather an undertaking to pay, & Pltff says that 25 Doll. mentd in it have not been paid. - That Larivière ~~who claims~~ to whom the beneficence of Mr Dumonts will was not one of his Censitaires at time of his decease, & the will extends only to them -

Berthelet

The Retrocession by Lariviere to Larry ought to bear Lods— Because the Land was not rendered to the person who had sold it, Lariviere having purchased it of Berthelet who purchased it of Renaud — Renaud bought of Larry — That it was a voluntary Retrocession upon which Plff is entitled to Lods, being also a Datio in solutum. — Prud. ch: 4. p. 352.—

Bedard for Defdt — That the writing produced, covers Lods of Berthelet, only question if it covers Lods also of Lariviere, which Defdt. says is evident, as it goes to the Land, which Berthelet possessed, must be presumed to acquit as well Lariviere as Berthelet — & the writing ought to be taken strongly agt. Dumont, who made it — That it ought to be considered as a discharge to Larry & not as an Obligation by him to pay — the words of Larry is made as binding him to pay, & by delivering the note to Larry, it must be presumed to be paid —

That Lariviere ought to participate in the beneficence of Dumonts will — if Larry is condemned to pay for Lariviere he will have his recourse over against him for it as it is the personal debt of Lariviere, the Lods on his purchase, & it was therefore immaterial whether Lariviere was a tenant or not of Dumonts at time, if he was his Debtor.

That there are no Lods due on the Retrocession from Lariviere to Larry — Because Larry was an old proprietor, & had not been paid, shed a right to his action agt. any person in whose hands he found the land. — The authority cited by Plff is in favor of Defdt. —

12)

Pluff. The Receipt is dated same day of purchase of Larivier before he had taken poss. of it. Is not a note, only a memorandum of debt.

That Larry cannot claim benefit of legacy in Dumont's will, being pursued en Dec. d'hyp. —

That the Revocation mentd. in Judgt. pyled does not apply to any of Sales mentioned by Pluff

Gliniel
vs
Laberge
&
Henry ~~et al~~

On opposition to Sheriff granting Deed on Sale of Defendts Land.

Defendt. states that the necessary formalities, have not been observed in making the Sale — vid. Dic. Droit. vo Saisie Reelle Poth. Proced. Civ. — } to shew when formalities have not been followed & the land sold for less than half it's value the party is entitled to have a new adjudication. —

Sewell for Henry — That no proof can be received agt. the Record, & by it appears that the Sale has been regularly made — That the rule ought to have been as the Sheriff to amend his return —

On 18th. Court without taking into consideration the allegations as to a Lesion D'outre moitié, which they consider as not applicable in a Sale by the Sheriff — admitted the Defdt. to a proof of the informality of the Sale of the land in question — considering that the return of the Sheriff cannot cover the want of formality in the proceedings, nor deprive the party of his right to prove such want of formality. —

Barlow & Labelle } Action on an Obligation for a debt for which Defdt became Security for another. —

Defdt — says, that Drouin the Debtor paid 25 Dollrs on acct of the Debt & the action ought to have been for the balance only — of this fact Defdt files a Receipt — only question is whether the receipt can in Law apply to this Oblig: it being stated to be for a "quarter de loyer du moulin à vent" — this ought to prevent the right of imputation in the Debtor to apply the monies to any account he pleases, & then the Pltff ought not to

Pltff — There can be no question respecting the imputation of payt in this case, as it appears by the receipt which Defdt pyles, that it was for a different object than the Debt now demanded; namely, rent of the Mill.

King & Bourdon

29. Sec. 9 An. ch 10.

Action for penalty agt Defdt as a ferryman for having refusd to ferry the postman over the river free of charge on St: 9 An. ch. 10. sec. 29. —

Pltff — The evidence proves the offence on 2 last Counts, as to Jean Landry Senr — prays Judt on two penalties on that proof vizt £10 — claims full costs according to Statute — and as Crown is not included on rules made by this Court on the Subject of Costs —

14)

Defdt. That evidence charges Defdt with an offence different from that charged in Delte. The charge being for not ferrying over the party within the half hour. & the evidence is that Defdt asked for money for ferrying him over.

King
v.
Papineau

Same charge.

Defdt. says, that he ought not to be condemned to pay any fine, there being such a contradiction in the testimony that no clear proof of the offence is made out against him. That there is also proof that Defendt could not ferry over the river on acct of the Ice, & on the 25 Dec. then is proof that Defdt could not then ferry as his boats & batteaux were drawn on shore & put up on account of the Ice.

Plff says, that two penalties have been incurred by the Defendt from the testimony adduced.

Oakley
v.
Beek

action for recovery of money due by Defendt on Obligation.

Plff. claims Interest on the principal sum mentd in the obligation and also on a Sum of £42. part of that Interest, which was left in Defdts hands as a principal, as stated in account rendered by Marriott Plffs tutor & signed by Defendt.

15

That the acct. rendered by Marstiller was made before Defendt. in his capacity of Notary, & every thing in it where he is mentioned must bind him personally cites. Lacombe. vo Notaire, no 15.— No 6. Denisart vo Notaire No 84. 85. & 86— 590

Lacombe Jurisl. No 15

In the account there is no absolute undertaking in the amount that Defendt. was to pay interest on £392. but on exams the act of 18 May 1805, it appears that this was the intention — By Ex. No 3. 18 Apr. 1805 mentions this intention also, considering the sum of £590 as principal & that Interest should be paid thereon by D. Mountain & Defendt— By Exh. No 7. it appears in the act. annexed thereto, that D. Mountain paid Interest on £150. instead of £145 — being £9. Cur — which evinces that D. M— as well as Defd. understood sums mentd in the act. rendered as principal sums upon wch Interest was to be paid — That Defendts answer that he should retain the amount of £400 for 3 years in his hand is contradicted. That from Defds answers he ought to be condemned to pay interest on £400 — but ought to be taken of him, there being no proof that the money should remain 3 years in his hands—

392
18 May 1805

Sol. Genl for Defe

That the two sums of £20. & £13. form no part of Pliffs demand as stated in his Declaration, he acknowledging the payt of these two sums—

That Pliff cannot support his action for any sum whatever

16)

That the debt is stated to be due to Wm Oakle & Ph. Oakle and nothing to shew ~~to ascertain~~ any ~~individual~~ right in Pltff alone.— By will of 3d March 1794. of Gordon Myer — who bequeathed the money to these two Minors, shews their joint right —

That the account signed by Defdt is not intended to shew the Individual right of Pltff but to charge the interest on the £42 in question — nor can the account alter or vary the Declaⁿ or give an individual right — more particularly as action is grounded on the Obligation — That by act of 18 Apr. 1806. there is no undertaking of Defdt to pay interest upon interest. —

If any Judgt can be given for Pltff it cannot be for the sum demanded, but only for the obligation & interest. —

That in balance of £372. there is interest calculated upon interest, wch is illegal and cannot be enforced by this Court.

Pltff replies — That the Tutor placed the monies in the hands of Defdt and took Oblig: in his own name. the Tutor alone is liable for this — And by the account rendered by the Tutor to Pltff. he assigns this Obligation to him in payt & Defdt by his act confirms this — If Ph. Oakle has any claims it must be agt his Tutor to render him an account of the Succession, he has no right on this Oblign agt Defdt —

17)

Ide. — Collins & Pettes opp.

On opposition & claim of Pettes. —

Pluff states a combination between Defd. and Opposts. to deprive him of the effect of his Judgt. agt Defd — & sham Suits was instituted agt. Collins sent in the Justices Court upon notes he gave, Judgt obtained, Exons sued out, and the whole of Defds property brought to sale & adjudged to Oppts & Defds brother — for a mere trifle — but it was never delivered, having remained in the poss. of Defd. was seized there — The testimony of Hurbut the bailiff discloses much of fraud —

Sewell for the Oppts.

That the notes given were for allowance to witnesses in the Cause, of Defd. considered as a just debt, which he preferred paying to that of Pluff — That the proceedings before the Commissioners were regular, & the Defds property regularly sold on the Judgt rendered before them — That many of the articles sold, & now sized were at Defendts request left in his possession, but as the property of the Opposants who paid for same —

18)

Chauret
vs
Chauret

action for £12.10 on agreement.

That
Defendt. pleads that there was mortgages on the land for monies due to Demarchais, when he purchased it of Pltff, sought not to pay the same — That Defdt. was authorised to settle wt Demarchais who had obtained a Judt. agt. Pltff — Upon this Defdt. obtained some delay from Demarchais, which ought to benefit him, & not Pltff —

Pltff says, that Defdt. has more monies in his hands than are sufficient to pay all mortgages on the property besides the sum demanded —

Chaboiller
vs
Roi —

(p. 24)

On obligation assigned to Pltff —

Defendt. pleads that he had delay from Durocher the obligee that action has been instituted before the delay was expired — on this account Durocher has been brought into the Cause as a garant — That the assignment is merely nominal, & was never meant to convey a right to the Pltff to the monies mentioned in it and Pltff never paid any thing on acct. of it — Prays that he may be allowed to adduce proof of these facts —

Durocher by Bedard — Denies Defdt. allegations, that he only made propositions to Defendt. which he never accepted

19)

Lacroix
v
Brareau

action for recovery of fees as an Advocate —

Defdt — Danl Mcm Forbes undertook on part of Defdt to pay Plff and offered him £15 - on act of his demand, qch he refused to accept as the whole debt was not offered — Two days after a Suit was commenced agt Defdt without any previous notice — That Plffs debt not sufficiently made out — That if a Judgt is given it ought not to be for the amount demanded nor ought he to have Costs —

Plff replies — That Defdt was not bound to take £15 on act of his debt which was £39 —

Saturday 18th Febry. 1809. —

Present

All the Judges.

Lilly & Boston
v
Pre & ch. archam=
=bault. ——

on motion to shew cause why a Ca Sa. should not issue agt the Defendr —

Pre Archambault — objects, that he is not a merchant, nor did he purchase the goods for qch the action was brought that he is only Caution for the debt contracted by charles Archambault, & therefore not liable to a Ca. Sa. for the debt. cites. Poth. Pro: Civ. part. 5. ch. 1. —

p. 5. ch. 1.

p. 22

20)

Blackwood
v
Cuvillier Jal.

On a rule to shew Cause why a Ca. Sa. should not be granted agt Defdt.—

Defdt. That Defendants are not the characters pointed out by law as subject to a Ca. Sa — They are sued as auctioneers and brokers, and for an act done in their capacity of auctioneers and brokers, and not being stiled or titled as merchants or traders as being the characters liable to a Ca: Sa: for the payt. of their debts.

That Pltff does not shew sufficient grounds on his rule to entitle him to the Ca. Sa.— namely, that he had discussed the property of Defendants & had not obtained payt of his debt, and also that the defendants are persons liable within the law to such Ca. Sa.— That no diligence has been done as there is no alias as to moveables, & no Exon whatever agt the real Estate of Defendrs —

Pltff. That Defendrs are traders, and brokers cannot be considered in any other point-of-view — & are within the Ordce — That Pltff proves himself entitled to have rule made absolute, as from the record he can shew that Defdrs are Insolvent & have assigned their property to Trustees who are now in possession of it & therefore all discussion becomes unnecessary.

Dfdt. That rule should state sufficient to entitle party to obtain the effect of his rule — here it is insufficient — That by Laws of Fran. Auctioneers are not considered as merchts or traders See Rep. vo Courtier & Denizt. &c. — That it is true a Courtier is liable to contrainte for goods sold by him, but in this case

the

21)

the Pltff has not taken conclusions agt Hicm for a Contrainte under the old laws of France, & cannot now obtain it. —

That there is sufficient in the hands of the Trustees to pay Defendants debts, and Pltff ought to be held to proceed agt that property before obtaining his Ca. Sa.

Burton
&
Phelps & others

p. 2)

p. 33)

On motion for appointment of a Sequestre to take possession of Pltff. Estate during Suit to prevent Defendt from continuing their trespass in cutting down wood on it —

Pltff. Fyles affidavits to Shew a continuance of the trespass and says, that by Law in case of a Complainte a Sequestre may be appointed.

Defdt. That a Sequestre cannot be appointed in the present case, as Pltff is in pos. of the property, only can be had where the pos. is disputed by two persons — That King has authorised cutting down the timber reserved on the granted Lands under Contracts, under which the timber has been cut down. — Offers security for all wood that may be cut down. —

Pltff. That he is entitled to his application even agt the King

22)

Monday 20th Febry. 1809.

Present

All the Justices

Lilly & Boston
Pre. & Ch. Archambaud

(p. 19)
case cont. from 18.

Pfff. Contends that the Caution contracts same obligation as the principal Debtor - Jr. Obl. № 404. — That by Fr. Law, the persons must be merchants to give the contrainte — it being the quality of the person & not the nature of the debt which was considered - This part of the law has been changed by Ordre of 1785.—

Deft. That although Caution is bound in all the oblig. of the debtor he is not bound to all the peines or extraordr. recourse qu. may be had as. That Debtor, qu. an out of the usual course of proceeding without a special undertaking & submission on the part of the Caution cites Cases of Munro & Bell. v Dorions — & Robertson v. Hebert & wife. —

p. 30)

April Term. 1809.—

Saturday 1st April 1809.—

Mr. Ogden, absent.

Robin
vs
Fagnan—

The Court were of opinion that an Interlocutory Judgt. agt. Defdt. to render an account, it was not necessary to signify copy of Judgt. ordering such account,

Lawr. & Dayton
vs
Cuvillier & Trustees—

(p. 24)

Plff objects to account rendd. as insufficient & irregular, & moves that Trustees be condemned to pay Plffs amount of their debt, as the penalty imposed on them by law for refusing to render the acct.—

Objects particularly to additions made at bottom of the acct. by wch it would appear that the books & property of the Defdt. is not in their hands but in the hands of A. Cuvillier, & does not point out what part of the property belongs to Defendt. & what part to the other parties concerned in partnership with him.—

2

24)

Monday 3. April 1809.

Present

All the Judges.

p. 23)
Lawrence & Dayton
Austin v. Cuvillier
p. 57)

Ordered that acct. rend. by Trustees be made out, agreeable to Intelocutor, shewing property of A. Cuvillier.—

p. 18)
Jo. Chaboillez
Louis v. Roi
& Durocher & Perinault
Garants —

On Defdts. motion to ex. Garants on faits & articles & for a Com. Rog. to issue to Quebec for that purpose— Objected by Pltff. that as answers on f. & art. can make proof only agt. the person giving them, therefore cannot operate agt. Pltffs— That Garants acknowledge that before the assignment of the debt to the Pltff. he agreed to give delay to the Defts. for the payt. of it, can in nowise operate as the Pltff.

Defdt. That he can avail himself of the answers of the Garant as the Pltff. as the Pltff can have no greater right than the person from whom he obtained it— and if Durocher gave delay before he assigned the Debt, the Pltff must be bound by it.—

Pltff. answers, that if he were bound by answers of Durocher, it would be admitting a principle qui might destroy Pltff. right by a Declaration made by fraud, collusion or otherwise —

25)

Alexandre
Gagnon —

Action for debt on Sale of land —
on Report of Experts. —

Pltff. moves that Report be set aside, as not having done right between the parties — having estimated the improvements as they stood at the time of the visit, qt is not agreeable to right nor the order of this Court — have also evalued a house built by Pltff, not by Deft —

Deft. says, that Report is right & agreeable to Justice of the Case. —

—

Desrivieres. —
vs
Matt. —
p. 31)

Hearing on Law.

Deft. That Declaration is insufficient — ~~Pltff sues as Intervenant~~ ~~par cession de Alex Robertson — That as he~~ upon several grounds. —

1. That the Contract in question was in favor of Joint Obligees & Pltff. cannot bring a separate action for his share of it
2. That it does not appear that the Community rights of Mary McPherson wt. late Alex. Robertson are vested in Pltff —
3. That Contract in question being joint by Matt & McKay, one of them cannot be sued for the Debt due under it. —
4. Non. ass. infra sex annos —
5. Prescrips. by laws of Upper Canada. —
6. Payt. by McKay under the bond he gave for the debt —
7. Special Statement of transactions between the parties —

= Upon the three first the hearing on law is now held by Deft — reserving as to the last four until proof shall have been adduced if found necessary. —

1st Point

1. Esp. N. P. — p. 117. — as to actions on Joint contracts
Id. — p. 246. 7.

That both Obligees ought to be parties, as Defdt may call upon any one of them on oath to ascertain facts wd would exonerate Defdt from the debt—

2d Point.

It is stated in Decln that Mrs Robertson had Community rights & therefore a share or half of the debt in question became her property by the dissolution of that Community, & it is not shewn that such rights ever became the property of the Plffs—

3. Point.

Same principle applies here as on the first point.— refers to same authorities.—

Beaubien for Plff.

1st Point.—

That Alexr & Jas Robertson being joint & several creditors either of them could demand the whole debt. Obl. No 260.—

That by dissolu of Partnership, survivor has right to demand his share only, & the heirs of the deceased partner same right, & cannot compel the other to join with him to prosecute — Obl. No 157. 270 Civ

On 2d Point—

That it is stated in the Declaration that Mary McPherson assigned her rights in the Community to her children by Sr A. Robertson

On 3d Point—

That the Debt is Solidaire, & Plff can apply to either of Partners for it—

27)

Ross for Pltf.

That after death of Alex: Robertson, his surviving Partner P. Robertson could not give a discharge for the whole debt but only for his own moiety —

That McKay is stated by Defts. to be absent in Upper Canada, & could not therefore be sued by the Court.

Sol. Genl. for Defts —

That the lex loci where the debt is contracted must regulate the present question — That Debtor when he entered into the Contract was in Upper Canada, & it was there where the Contract was to receive its execution by receipt of the money due on it — cites Robertson. v. Bland.

That by Law of England the Survivor of a Partnership may alone sue, but he sues as well in his own name as on behalf of the deceased partner for the whole debt — By the laws of the Country the heirs of the deceased Partner must join with the Survivor to bring their action for a p. debt — but they cannot divide their rights & bring separate actions for their separate Shares. —

That Alex: Robertson may have been entitled only to one fourth share of Partnership instead of one half as he alledges, therefore the Defts. cannot be said to be safe in paying what he asks as his share in a debt yt. was contracted with several persons —

28

Ross
v
Turgeon

On matters of law. action for defamation –

Defdt objects to sufficiency of Declaration, & says, that the words are not actionable

Where the words are merely such as may wound a mans feelings the reparation d'honneur is granted to him – where a damage ensues to a party in consequence of the words, damages as have demanded, may be granted, but the words here specified can intitle Pltff only to a reparation d'honneur. –

Sewell for Pltff.

Contends that the words stated in the Declaration are sufficient to support the action & to intitle Pltff to damages –

Smith & ux
v
Prigmore

action of ass. for labor &c as actors for 5 weeks in employt of Defdt –

Pltff. Case made out by proofs adduced –

Defdt. That Pltffs demand £4. 10 ₰ week. Pltff. witness not acquainted with theatre, or play acting – That neither time alledged by Pltff. to have been employed is made out, nor the quantum of wages demanded – Proof only of 3 weeks services, & proof by Defdt witness that they ought to have £7. 10 or ten dollars ₰ week –

Lyman & Co
vs
Chesser — } Action on Notes —
nothing said —

Tuesday 4th April. 1809. —

Present.
All the Judges.

Saraut —
vs
Marmier.
&
Noel. Garr.
&
Bouthillier
ar. Garr.
p 82) } On action to remove a wall built by Defdt. av. Plff. wall.
Question between Garants & arriere-Garant. —
Bouthillier was propr. of both houses — sold one to Plff. & the other afterwards to Mr. Noel — but the building made by Defdt. does not come within the Garantie of Bouthillier, as it was made of the gros murs of Saraut and not of the pignon — There is nothing that calls upon Bouthillier to defend the warranty he made to the Noels —

Panet for Noels. says, that only question is whether he has a right to call in his garant — That Bouthillier sold to them a droit de mitoyenneté, in qt. he is now troubled, & therefore have a right to call upon their vendor to warrant what they sold —

Ross for Defdt. That he has a right to call upon the Garants Noel as he has been troubled in the right they sold, qt. is sufficiently stated in the action av. Defdt —

30)

Lilly / Boston
p. 22)
Ch. Archambault
p. 73)

On rule to shew Cause why Ca Sa. should not issue aft Dfts

Lacroix for Cls. Archambault –

There does not appear to have been made any discussion by Sale of Defrs property under the Exon ovd aut – 7 Mt. Pothi. p. 274 – 288. –

That Defts has paid more than the amount of Plffs debt since the Judgt was rendered as by aut produced –

Beaubien for Plffs That he has made a discussion of Defts moveables but has no return as to Defts real Estate. qt he could not obtain, as he could not come to a knowledge of them – but contends that the Defendt ought to be held to give a description of his real Estate –

Court to take communication of aut filed by Defts of payments made by him on the Judgt.

Wednesday 5th. April 1809. —

Present

all the Judges.

p. 25)
Desrivieres
Tute. &c
v
Hatt. —

Judg^t. dismissing the Exceptions raised by Defd^t. in his Plea. —
& ordering parties to go to proof.

See authorities —
1. Rep. v^o Solidité
2. Bornier. Tit. 4. des Societés. Art. 7.
1. Despeisses. Cont. de Societé. p. 141. N^o 18. —
Watson on partnk. p. 458. —

p. 64)
Gallaudet
v
Lefevre —
and
Paysan dt.
Sancaptain —
Lefevre —
p. 64)

It was agreed that same Jury should try these two Causes, being actions for defamation at the same D. fend^t —

verdict in first Cause for £10. dam. & Costs of Suit
In second Cause —— 5/— & Costs of Suit

Benj^n Cole
v
Haight
and
Sal^l Cole Garant
&
Garnishee —

Action on promissy Note —
Plea — no indorsement on Note, parties not merchts —
Defd^t. has taken out an action en Garantie of Sam^l Cole, stating that Note was an Arbitration Note, & offers to submit matters in dispute to arbitration anew — this was agreed to — & a Report now made allows 5/. dam. to Plff — Defend^t. moves that Report be homologated & that there be Judg^t. on principal demand

32

Sewell for Defd.

That there are two points of defence in the principal demand
1st That the parties were upon the indorsement ought to have been
filled up on the note before bringing the action.—
2. That indorsement made without consideration—

That being an arbitd Note called in as his Garant the
person to whom the Note had been given, who came in & consented
to a new Arbitration, & the Arbitrators agree that Samd Cole
is indebted to Pltff in 5/— Prays that Samd Cole the Garant
be condemned to pay whatever he the Defd may be condemned to
pay Pltff.—

33)

Friday 7th April. 1809.

The Chs. Justice, absent

(p. 21)
Burton
vs
Phelps & Several
p. 35

Motion on behalf of Defendts that the wood attached under the saisie-revendication, be delivered up to the Defendts on their giving security according to law to bring back same or the value thereof as Court shall direct. That this has been the constant practice in cases of this kind cites. Poth: traité de prop. № 313.— Repertoire. vo Revendication

Ross. of counsel for Defdts cites case in vacation before the Judges where Staves seized were ordered to be delivered up to Defendts on similar security.—

Kolland for Pltff— Denies the practice to be as alledged by the Defendts— That by the law the person claiming the property seized in this manner must have a presumptive title in his favor— Here the presumption is agt the Defts as they are trespassers, and the wood seized was & is on the Seigniory of the Pltff.—

Sewell for Pltff. Contends, that right claimed by Defdts motion is not of course,— either as to obtaining the timber on giving security, much less the kind of security proposed— to bring it back, or its value— The law directs that the thing itself shall be brought back, & the Defendts ought to obtain the timber in question upon no other condition. That the Court ought to consider in qm the property is, & from the face of the pleadings it is in the Pltff. ql is alone suffte to reject the motion— The title set up by Defdts is wholly insuffte— as the reservation to Hs Majesty, under ql they claim, does not warrant either the Crown or any person under it to cut down wood on Pltffs Estate without his permission. and the reservation extends only to oak, whereas the Defendts have cut down every kind of wood they found useful on Pltffs Estate.—

Sol. Gen.

Sol. Gen.l – in reply – That present application must be determined on without reference to title in either of the parties – the only question to be considered is who was in poss. when the attach.t was sued out, q.t alone is a suff.t ground to grant motion – From Pltff.s own shewing in his Decl.n the Defend.rs were in poss.n of the timber at the time of Seizure, whether that poss. was tortious or not is not now to be determined. – If the thing secured were of any specific sort as a horse, the Security ought to be to represent it in nature, but in the present instance where it is only pieces of timber, q.t are of a perishable nature – the price of q.t is liable to vary, & the season on the point of closing to draw it from woods, the reasons are strong for granting the motion. – In the Seigniories of Sabrevois & Bleury the reservation of wood to His Majesty is generally all such as may be useful for the construction of Vessels – in the other Seigniory it is true, it goes to Oak timber only. –

Murray
vs
Harrington
(p. 35.)

Defd.t mo. for Sec.y fo costs – Pltff living in foreign parts –
Pltff – says that Defd.t has pleaded to the action & thereby waived his right to costs – cites case of Fowler vs Elderkin & opp.ts –

Defd.t replies, that under rules of practice Security ought to be given at all times when demanded, & if not demanded at an early period it ought to be from the time it is thus demanded. –

Saturday 8th. April. 1809.-

Present

All the Judges.

(p. 33)
Burton
v
Several

The Court were of opinion that the Defts motion should be granted -

(p. 34)
Murray. -
Harrington

The Defendts motion rejected -

Beck
v
Denau

On Bill of Excps. filed by Defr. to an order on Pltff. motion to set down Cause for ex. of Wits. -

The bills of Excps rejected - the order of the Court not being on any law usage or custom of the Province, in which only such Exception can be allowed. -

Sentier
St Germain
Hunter
Intervs

(p. 48)

On motion to intervene after Pltff. motion to discontinue the Cause -

The Intervenant contends for right. cites Pothier. Traité de la proc. Civ.

Rollard - That Interv. is in nature of a Subrogation to claim right of his Debtor who is Pltff - that he has a right to this Subrogation aft. consent of Pltff & he cannot discontinue the Cause after such Intervention to Intervenants prejudice — assimilate Interv. to a creditor en sous-ordre. —

Bedard for Deftr. That Pltffs motion to discontinue the Cause before the motion to intervene was made. —

36)

Gibb
Hérigault
vs
Hérigault
vs
Dion & al
Garants
(p. 41)

On motion of Hérigault to alter the conclusions of his Declaration & adapt them to the circumstances of the case in consequence of the Judgt rendered in favor of Pltff. — v. Rep. vs Garantie — & vs indemnisor: —

Ross for Garant —

That after Judgt in gl all parties were before the Court, they ought not to be permitted to make any alteration in their pleadings.

Henderson Armour & Co
vs
Dieffenback
(p. 41)

On Defts mo. to prove that Indorsement had been filled up on the Note filed since the fyling the ~~same~~ — the other proofs in the Cause being completed —

Pltff. That proof if made is not material, as the Note is negotiable and the parties being merchants, had a right to fill up the Indorsment before the Court — insists that the Indorsment was filled up on the note at the time it was filed. —

Deft. says, that Deft is not a merchant, and that Pltff had no right to make any alteration to any paper filed in support of his Cause without his participation.

Lasaussé
vs
Burton &c
(p. 38)

On Pltff mo. ~~that~~ Com. Rog. obtained by Defts. be suppressed & taken off the record as irregularly sued out —

Deft. changed his Interrogatories — the sett first served, on Pltff, with drawn by Deft & com. sued out on another sett — contends that Interrogatories once served cannot be altered by the party without leave of the Court — Prac. Cls. — Harrison. 1 vol. 50.

That copy of the order to ex. Pltff: on f. of art: should have been served on Pltff, living in a foreign country — (cont. to p. 38)

37

Hammond
vs
Chevallier
p. 82

Action for Damages –

Bedard for Pliff. states that Pliff goods were seized as being illegally exposed to sale without licence, on the information of the Pliff on whose plaint a warrant of Seizure was issued by Mr Dumont a Justice of Peace, by means whereof Pliff sale was injured & the Pliff damaged £33. –

Rolland for Defdt –

That Defdt never made any complaint to the Magistrate of Defendt – refers to testy of Dumont – Dumont the Magistrate issued his warrant on view –

That Pliff is a pedlar, colporteur going from house to house & parish to parish, & as such had no licence – St. 1805. cls. 13. –

That every colporteur may stile himself Encanteur & thereby refuse to shew his licence contrary to the provisions of the said Statute –

That licence of Encanteur, does not extend to authorize the party to trade as petit marchand or colporteur, they are different characters & under different regulations. –

That Pliff even if he had a right to trade in the manner he pretends was bound to shew his licence when demanded by the Justice –

Sol. Gen^l. of counsel for Defdt

If Pliff had proved that he was resident within the parish of St Eustache & in the habits of selling by auction on days of fete at Church door, he wd have entitled himself to his action – but Pliff is a travelling pedlar, and an auctioneering pedlar –

No proof of plaint or information being made by Defdt. of Pliff.

Bedard for Pliff.

Wide distinction between pedlar & Encanteur – one sells by private sale the other by public open Sale – That Pliff is Encanteur only

38)

only and as such he has been for several years at Ste Genevieve — That an Encanteur has a right to sell in any part of the province — and is not bound to shew his licence to any person

That there is proof of the information having been given — test? of Crispin —

—

Lasaussaye p. 36 v. Burton — p. 47.

That the Interrog?. are improper, tending to convict the Pltff's husband of high treason —

Rollard for Defdt —

That Pltff. Attv. did not attend on the notice of making Exp the Com. Rog. to object to the propriety of the questions —

That party had a right to alter his Interrog?. if he thought fit — here no alteration, second sett same as first, only more certain — That Pltff may object to some of the Interrogatories but they are not all objectionable, & he ought to move for the suppression only of such Interrog?. as are improper —

That there was no necessity to serve the order

Sewell for Dfdt.

That he had a right to file new Interrogatories upon not filing that he withdrew the former — That Defdts counsel did not attend to object to the Com. being issued on the 2d sett of Interrog? —

That Com?. notified to Pltff the authority they had from this Court to examine them, & was all that was necessary —

That the Interrog?. are pertinent to the Issue —

39)

Boucher
vs
Goguet

On account rendered by Défendt.—

Pltff alledges that the account rendered is imperfect & insufficient and prays that Experts may be named to settle & ascertain the matters in contest.—

—

Lacroix
vs
Limoges
& Jordan Intervs
as Garant

On a Petitory action —

On proof ordered by Interlocr of last Term—

Pltff says he has made proof of ameliorations made by him on the property to amount of 2000£—

No proof of sale or transfer from late Jordan to his Trustees, nor that house sold by the Garant to Defr. is the same as mentioned to have been made over to Trustees —

Sewell for Defr & Interv3 party—

That the term aliener in the power of attr from Pltff to late Jordan was suffr to enable him to dispose of it as he should see fit.

Nothing done to the house after Pltff after he gave power of attr to sd Jordan— proof that Jordan made considerable repairs— That there is proof that house was made over by late Jordan to his Trustees—

That even if Pltff be entitled to rents of house even if he can claim the property, as Defr. is a possessor of good faith, has made improvements on the property — Poth. Traité de Prop. Nr 337— also 345 —

Bedard for Defr

Pltff is not entitled to his present action, as by the power he gave to

337

40

to the late Mr Jordan to dispose of the propy. as he shd. think fit, he made a cession of it for the benefit of his Creditors, & this he had power to do, & Pltff cannot be received to come at that end —

Pltff says, that the original purchase money from Mr Jordan is paid and this by the rents recd. from the house since the power of Attys and there could be no legal sale to Defts —

Lussier
vs
Choquet

} cont. to monday morng —

Monday 10th April 1809.—

Present.

all the Judges.—

p.36)
Gibb
v
Herriquault
p.46)

on the Defdr motion to change the conclusions of his Declaration en garantie, the Court were of opinion that the motion could not be granted inasmuchas the Defdr having taken the usual conclusions at his garant upon which the parties have been heard, and a Judgt given thereon agt the Garants.—

p.36)
Henderson Armour & co
v
Dieffenbacher.
p.47)

The Defendr motion rejected, it appearing that the Indorsement filed up on the Note was made at the time the protest was made by the public Notary, Grey, & mentioned in his protest filed among the pltffs exhibits at the return of process.—

Nowlan.
v
Martin.
& contra—
p.48)

On Report of Auditors.—

Sol. Genl for Pltff.

Report insufficient — the Auditors negative Pltffs claim, & allow same to Defdr — as a sett off agt Pltff

That arbitrs should have ascertained whether there was any debt due by Martin to Nowland agt alone could be set off agt Pltff. — That Pltffs demand was proved before the cause was ordered to go before Arbitrators — when party produces an act or papers in his favor, they must also be taken afhim — cites — Rep. vo — Acte.

Proc. Civ. 1 vol. p.112. ch.3. art.2.
Trait. Obl. No 718.—
Doug. Rep. p. 788 —
Danty Int Tem. p.706 —

That Arbitrs are bound to follow same rules of evidence and proceedings as the Court would have done —

1. Bossie vs arbitrage. p. 269

Ogden for Defdt-

That the arbitres have regularly stated the acct. between the parties-

That in the balance of £81- which the arbitres allow to Capt. Martin is included in the balance of £15. - ought to be deducted as being due to Col. Falconer - this however ought to be made more evident

That the acct. is not regular not being signed, nor annexed to the report-

Sol. Genl. That arbitres take what is favorable to Martin in the acct. and negative what is to the credit of Nowlan, whereas the acct. should be taken altogether, or rejected them altogether -

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Labelle. vs Boutron. - (p. 48)

Action to recover timber cut down & carried off the Pltff land -

Sewell for Pltff-

Complains of injustice of the arbitrators in refusing to peruse & examine Pltff. titles to land in question - this appears by affidavit of one of the arbitrators - prays for a new Report by other arbitrators, or hear Arbs why they rejected such evidence

Sol. Genl. for Deftes

That arbitrators have proceeded regularly, & found fact that wood was cut on land in poss. of Deftes - That affidavit

of

of the arbitrator of the Defd. ought not to be admitted, as such principle wd be destructive of all reparation no injustice is said to be done, even by affidavits filed —

Dorregani
v
Normandeau
(p. 47)

Action Petitoire — on Exep. pleaded by Defdt

Sol. Genl

That there is no right of property in the Pltff the person Dupéré from whom he purchased having nothing in the thing in question to sell, the whole of Dupéré's right having been previously conveyed to Defdt — That Pltff never had the property, nor possession, & therefore could not bring his action as a third person —

Poth.r Prop. —
Repse Revendication —

Ross for Pltff

That diffce between action petitoire, & the action de Revendication according to authorities citied by Defdt — That none but Pltff can bring the action the right being ceded by Dupéré to him, & if Dupéré had brought it after his Sale, his action wd. have been dismissed

Poth. Prop. Nos 193. to 204 on tradition. —

McKenzie
v
Taylor } Judtes respecting livery of Saisine.

Sol. Genl. in reply. —

That Pltff not only fails to allege sufficient tradition, but if the grounds of Pltff's right be considered, it will appear that no right could be conveyed to him by Dupéré, & there could be no taking poss. even in fiction, as it was in the Defendt — That if Dupéré had sold to another than Pltff & put him in poss., the person so in poss. would alone have the right of action —

44)

Sussier
vs
Choquet.
&
Sanguinet
Garantie —
(p. 80)

Or action pétitoire

Beaubien for Pltff

States case, & the proof adduced under his titles & interlocutory order of this Court to ascertain that lot of land in question is within the extents of the Seigy of Varennes as sold to him by Sanguinet — That Defdt alledges prescription — but by his title which he files his right extends only to line between Fief Latrinité & Bélœil, &c

Dic. Droit. vo Titre vicieux. —

Coth. Prescripn — 175. — } No prescription proved to be without
118 art. Coutumes — } interruption according to these auths —

Benoni Dejardin — proves poss. of Sanguinet 26 years ago —

That Garant says, that lot of land is not within the limits of Carrière Fief de Bélœil —

Ross for Defdt

Land in fief Latrinité, & not in the carrière fief de Bélœil — but even if it were within the limits of Pltff, he is ready to pay rent for such part as may be within the censive of Pltff, but ought not to be deprived of his land —

Rolland for Garant

That he ought not to warrant Pltffs right in this action having sold the Seigniory of Varennes according to its limits and bounds, & can be bound to warrant no more — That he considers action as for vice de fait in ql there is no warranty — That Pltff files a title ql contradicts his prescription, by it he is bound by the ligne Seigneuriale, & by his testimony he wishes to prove a title his prescripn beyond the line —

45)

Bedard for Pltff. in reply.-

That lot of land was sold to Pliff by Sanguinet as part of a Domaine, the arriere fief - it is more advantageous to him to have the Seigneurie directe than the Seigneurie utile, -

That Defendts titles contradict his claim of prescription, as by his titles he is bound by the Seigneuriale line between Fief Labrimbe & Fief de Beloil - the lot he claims is within the Fief de Beloil -

That if this line cannot be taken as settled as to Defts land, this land should be measured by a Surveyer according to his titles -

as to Garant, there is no doubt, he having sold the quantity of land claimed by Defts -

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Young
vs
Blackwood
et al.
(p. 47)

Action agt Trustees of Cuvillier & Co to render acct.

Sol. Genl. for Pliff -

That Defendts plead they were always ready to acct according to certain deed of Cession under qch they hold their property, - which is no bar to Pliffs right of action -

Ross for Defts says, that they hold propty by virtue of a certain deed of Cession, & are ready to acct agreeable thereto, but as Pliff never asked for his dividend under that Deed, they ought not to pay Costs -

Sol. Genl. That deed of Cession can in nowise be taken agt Pliff as all the Creditors have not joined in it, nor can be considered as binding on him - That Defts ought to be held to render an acct generally of all property in their hands belonging to Cuvillier & others without reference to deed of Cession qch is illegal & fraudulent as to Pliff. cite 3 Term Rep. Eckard vs Wilson. - That Defts have not put the deed of Cession in Issue & cannot avail themselves of it, nor can its validity be well adjudged on under Defts Plea. -

3 T. Rep. Eckard. wilson.

46)

Marat. — vs Laliberté. —

Action for Sale of a vessel

Vigé for Defendt. on Excep. à la forme. that Pltffs have not sufficiently pointed out their place of residence, stating themselves to be of Quebec, without saying in what district —

Parent for Pltff —

That the Exception is ill founded, the Pltff place of residence being sufficiently described.

—

De Hearne vs Nowlan. —

On rule Nisi —

Contd. till to morrow.

—

Gibb (p. 41) vs Herrigault & Dion Gar. — (p. 61)

On report made under Judgt. of 20 febr. last —

Sol. Genl. for Defts states that there is part of property gt. is not conformable to Judgt —

Ross for Garants — says, that his party had no notice of the proceedings of the arbitrators

—

Tuesday 11th April 1809.

Present

All the Judges.

(p.38)
Lasaussé
vs
Burton
(p.71.)

The Court rejected the ~~Defendt~~ Pltff's motion, being of opinion that the Defdt. had a right to countermand the faits & articles served on Pltff & to serve others — and inasmuchas the Pltff did not require that the faits & articles should be communicated to him and the pertinency admitted or declared by the Judge before suing out the Com. Rog. the Pltff cannot now require the suppression of the Commission & Interrogatories, — but the Court reserved to Pltff her right of objection to all or any of the Interrogatories which may be considered as impertinent, upon the hearing of the Cause. —

(p.46)
Merret & al.
vs
Laliberté
p.69

The Court dismissed the Exception. considering that the residence of Pltff. is sufficiently set forth, & as Defendt. does not allege there are more places of that name, so as to create any uncertainty

(p.41)
Henderson & Co
vs
Diefenbacker
(p.75)

Each of the parties moved to examine the other on faits & art. & the question was whether they should both be examined on the same day or whether the Pltff should first examine Defendt. before the Defendt. gave any communication of the Interrog.s he meant to propose to the Pltff — The Court were of opinion that no advantage should be taken either way upon such examinations, & ordered that both parties should be exam.d the same day, but that the Pltff should agreeable to the order of proof first communicate his Interrogatories to the Defendt. and the day after given to Defdt. to communicate his to the Pltff. —

(p.43)
Donegani
vs
Normandeau

The Exception dismissed. —

Poth. Cont. Vente. № 317. —

(p.45)
Young
&
Blackwood & al
(p.82)

As Pltff has not replied to plea stating circumstances under which the Defendants hold the Estate of Cuvillier & Co & there being nothing in the pleadings to shew that Pltff agreed to take a dividend in common with the other Creditors as he verbally stated before the Court The Court ordered pltff to perfect pleadings by his Replication. —

(p. 41)
Nowlan.
v
Martin. —
(p. 77.)

There appearing an ambiguity in the report of the Arbitrators respecting a sum of £81.— which they allow to be set off by Martin agt. Nowlan's demand although it be a debt due to Col: Falconer — the Court ordered the Experts to appear in Court to morrow to explain this matter, in order to make a further Interlocut if necessary

(p. 42)
Labelle.
v
Boutron & Major

The award hom. & action dismissed. — The after declaration of one of the arbitrators that he had been led to join in opinion with the other by reasons he used, being considered by the Court as inadmissible to set-aside his own act, & that a sufficient ground to grant a new rule for a further examination of the matter in contest. —

(p. 35)
Tertier. —
v
Wm. St Germain

The Court rejected the motion to intervene & allowed Plff to discontinue on payt. of Costs. —

Habeas Corpus.

— Dantour by his Counsel moved for a Habeas Corpus to be addressed to Major General Drummond Commanding the District in order to bring before the Court the body of — Dantour his Son said to be held as a Soldier under illegal restraint, he being a minor and never duly enlisted — The Court upon examining the affidavits were of opinion, that as the boy had been enlisted by an Officer of the Canadian Fencibles who is resident at Three Rivers where the boy now is, and that the said officer was the immediate Cause of his detention, and who besides had rights to defend under the enlistment he had made — this officer was the person to whom the Habeas Corpus should be directed — and therefore refused the present application. —

49)

Beek
vs
Dewar
p. 55)

On Inform.n qui tam. for assisting in importing tea into province without paying duty as required by Law.—

Rollard.— On plea of Excep. that Decl.n is not suff.t & that there is no law in force in this province to warrant the prosecution of this action — The St. of 1774 giving certain duties refers to the mode of levying them but there is noths as to prosecuts persons assisting in bringing in dutiable articles into province without paying duty thereon — The Order of Council of 1796. not applicable — That there should also have been a condemnation of the goods as unlawfully imported into the Province before Defdt can be prosecuted — The Defendt can be considered as an accessary & that principal offence not apparent

Sol. Genl for Plff. —

St. 45. Geo. 3. ch. 2 Gaol act, laying a duty on tea imported into this province. —

St. 14. Geo. ch. 88. regulates penalties of persons bringing such articles without entry & payt of duty, & the Gaol act evidently refers to it when it speaks to the modes of securing & raising those duties —

Ross of Counsel for Defdt

That there should have been a seizure & condemnation of the tea before any action could be brought agt Defendt who can be considered only as an accessary — That quality or value of tea, are not ascertained so as settle amount of forfeiture. —

Declaration in its conclusions goes further than the premises Plff complains in name of King himself, but in conclusions he prays that ~~it~~ penalty may be divided into three parts, one to King one to Governor, & one third to the prosecutor —

That the trade between this Prov. & U. States regulated by the order of Council of 1796, by wh a certain time is allowed to

party

party importing a dutiable article to make entry & pay duties at Custom house — and Decr ought to have stated that the article had been a greater time within the province than is allowed to make the entry; — the Prosecutor ought to have negatived the exceptions of this Order of Council to entitle him to claim a forfeiture —

—

Inform.n of Seizure &c. Tobacco. — (p. 9)

1 Claim of Abner Bingham (p. 82)

Hearing on merits. — & on claim of Bingham. —

Sol. Genl for Prosecutor. —

Prosecution on the Order Council of 1796 for importing dutiable article of tobacco into the province without making entry at Custom house at St Johns & paying duties. —

That there are strong circumstances to shew that claimant had a knowledge that the two puncheons in wh the tobacco was contained when put on his waggon, did contain tobacco & not potash as was alledged, — bought of the article — and the claimant's agent not paying when the article arrived at Laprairie, to Jeremie, that puncheons should be put under cover as being smuggled goods —

That testimony of Leblanc as to inspection of puncheons by Mr Lindsay contradicted by Lindsay — Burt's testimony contradicted also by Lindsay — as to entry of puncheons made by Burt at Custom house

Ross for claimt. —

That Lindsay does not say he was in the boat of Burt, and cannot ascertain so well as owner what was in the boat — Sent Rousse to ex. two puncheons who reported them to contain potash — No proof agt. claimt, nor that he had knowledge of wh was contd in the puncheons — Claimt a common Carrier, knows nothing of the contents of the puncheon there must be proof agt him to render his property liable to confiscation

Sol.

Sol: Gen! policy of Revenue laws such as to bear upon every party who assist in defrauding them, even were he innocent —

2. Bl. Rep. 1291.—

—

Park — Dennan — On Def. mo. to shew why Pliffs action should not be dismissed, as he had filed no replication agreeable to rules of practice —

Rolland for Defdt — states, that by his plea he had concluded to the Country & by the rules of Prac. the Pliff ought to enter a similiter that Cause may proceed regularly to trial — Pliff had not done so — therefore rule ought to be made absolute

Sol. Gen! says that Issue is compleat without Replication — that in England the entering the similiter is never done by the party, but by the Officer — but if by rules of practice this Court found it necessary he would now do it —

The Court ordered Pliff to join in the conclusions to the Country, as the rules of Practice clearly required it. —

—

Roger &c — Rondeau — On Report of Experts. —

Roger for Pliffs prays hom. of report. —

Panet for Def. alledges, that arbitrators wd not hear him nor his witness — allow more to Pliffs than they claim by Declr — That they made their report after the expiration of their power under the rule of this Court. —

Roger — rule of reference was extended to 10 febry on that day the report of arbitrs came in — That from Defdts admissions there is enought to condemn him — and as to the arbitrators allowing more than demanded by Declr the Pliff waives his right to any more and moves that the amount of his claim be granted to him —

Hart —
v
Dupré & ux.

action ag. Defs. for balce of acct

Beaubien for Pltff.

Pltffs. demand proved by Exhibits before the Court —

Ross for Defts.

Contends that there is no evidence of Pltffs demand — From Grenier's testimony it appears Pltff sent beer to ~~Dupré~~ Agnew to sell for him — From answers to Interrogs upon facts & articles Pltff acknowledges that parcel of hops must be set to his credit —

Beaubien —

That by — ps. by Agnew to Mr Worbrit, were monies of Pltff —

—

on Commission — that beer at his decease was found in his poss. has become unmerchantable & entered in the Inventory as property of Pltff. now ready to return it;

Hart Lal. —
v
Agnew. —

On a rule Nisi qr. Exon should not issue — & Judgt —

Ross for Defdt.

Pltff. examined on facts & art — admits payt of £50 — 8. Feby. 1803 for qr. he gives no credit in his acct —

Gruet
v
Moreau
(p. 81.)

Action to recover amt. of an Obligation —

Panet for Pltff.

Action for money lent to the wife of the late Malone, to whose children the Defdt. is tutor —

Vigé for Defdt —

That Mary Pancher was never separated from her husband could never legally contract the debt in question without the authority of her husband — that of Justice — art. 223. Coutr.

Panet for Pltff

That late Mary Pancher is now represented by her minor child who as her heir is entitled to her share in the Community

Ellis
v
Arakouante

Action for Re-union of a land to Domaine of Beauharnois —

Beaubien for J. Richardson as Tutor to G. Ellis to 9th this Seigniory had been bequeathed by the Pltff his father, prays Judt on the proofs adduced — That there was a reprise d'instance in the name of the said G. Ellis, as the only person having an interest in the Suit —

Ogden for Defdt

says that Pltff should have come in by Intervention and not by reprise d'instance, being a legatee à titre singulier, not an universal legatee or heir of deceased. cts Pothr. Proc. Civ. Sec. 3.

That Mr Beaubien has entd appce for Al. Ellis at a time he was deceased —

Beaubien — Pltff. says that G. Ellis being alone interested in this Suit he is entitled to take up the instance in his own name — That entering appce for Mr Ellis Pltff deceased is of no moment — as no proceedings were had in his name the whole being carried on in the name of the Legatee —

54)

Dr Thearne
vs
Nowlan

On rule Nisi. – Why Defdt. should not be ordered to deliver back certain books of acct. which he laid before them in support of his claim in this Cause. –

Sol. Genl. for Defdt.

That books produced by Defdt. before the arbitrators were never filed nor produced with a view of being evidence, nor of being kept in the hands of the arbitrators – That party cannot be compelled to produce evidence agt. himself –

Sewell – That the party having laid the books of acct. before the arbitrators in support of his vouchers, they have consented to that they be considered as evidence in the Cause. I ought to be

Wednesday 12th April
Thursday 13th April } Witness days

Friday 15th Febvy. 1809.

Present

All the Judges

Beek (p. 49) v. Denau — on Plea in bar

The Court were of opinion that the Information was well laid on St. 14 Geo. 3. ch. 88. and dismissed the Exception pleaded by Defendt.—

Lacroix v. Labelle — Action to recover amt. of 3 Obligations —

Lacroix for Pltff. Defendr produces sundry receipts prior to the Obligs being Exhib. No 1. to 5. & claims credit for them, but this Pltff denies as they are prior to the Obligations — admits two which appear to have been given since —

Ross for Defdt. says he has made a statement of monies paid on the Obligations & has filed his receipts to support it, that there is a balance due Pltff of. he is ready to pay. —

Lacroix v. Renaud — Action on ~~Obligr~~ Promissory Note —

Lacroix for Pltff. — claims balance due being £18. — Objects to the receipt in name of Et. Perron as not relating to demand of Deft.

Ross for Deft. prays that he may be admitted to prove that the sum pd by Et. Perron was on acct of the Defendt. —

56)

Lacroix. —
v
Bouvet
& Morin opp.
(p. 80)

On opposition of Mr. Morin —

Beaubien for Pleff, states — Opposition is retain by M. Morin the purchaser the amount of the purchase, under pretence of a Dower due thereon —

Viger for Oppt —

Opposition to preserve the amount of the adjudication in his hands as their is a Dower on the property, which is not destroyed by the Decret, & as Dower is not yet open he is entitled to retain the money to answer claim for dower when made —

1 Bourjon — tit. 13. p. 666. art. 60 - 64 —

That adjudicatair liable to an action en decl. d'hyp. for Dower —

Renusson. Ch. 10. Nº 6. 7. 8. 9 —

Bacquet, droits Just. Ch. 15 Nº 72. 73. —

Oppn of Normandeau on Sale of Dupre's house

Beaubien for Pleff

That property being seized & sold at Suit of Creditors prior to Dower there can be no oppn. Renusson. Ch. 10. Nº 4

2 Argou. p. 145. 146. de l'augment du Douaire

Renusson. traité Douair. — p. 221. 222. Sect. 4. 5 —

Cr. Com. art. 249. Sect. 19 & 23 — p. 765. & 766 —

That Margt Lehenp's right is prior to the Dower —

That even if there be a surplus after payt of the prior claims, the Creditors posterior to the dower have a right to a distribution of it —

case Blackwood. vs Perrier and Badeau Oppt.

Viger in reply —

Poth Douair Nº 92. says. that claim of Dower will hold on the surplus of money so far as to oblige the posterior

57)

Lascelle vs Robertson & Sutherland

On rule to change conclusions of Plea from Country to Court

Bedard for Pliff

Says that the action is for damages for not fulfilling his Contract & Defdt. is not entitled to trial by Jury

Lavelle for Defdt. says, that the damages claimed are the consequence of a mercantile contract, viz! the non-delivery of goods sold

The Court ordered Pliff to conclude to Jury - which was done —

—

Lawrence & Dayton vs Blackwood ded

(p. 24) (p. 67.)

On acct rendd. agreeable to last Interlocutory —

Sol. Genl admits the account to be regularly made, but is not sworn to —

That question what part of the property shall be paid to Pliff out of property of Defendt. Pliffs propose to sell the Individual property & to let Individual Creditors of Cuvillier come in with their claims — when a discussion can be had upon such as may be inadmissible —

Ross for Defdt. says that the property ought not to be sold nor paid to Pliffs as there are many other Creditors having greater claims than Pliffs thereon who do not demand it — Nor can Cuvilliers property be paid to his separate Creditors to the prejudice of his partnership Creditors. —

—

Rouillard vs Pangman (p. 66)

Action of dam. at Defdt. for turning him out of poss. of a mill &c. he had a lease —

Hearing on Excepn

Rolland for Defdt

Pliff has improperly joined an action de complainte & reintegrande ~~vous avez troublé~~, and an action of injures verbales, qu are incompatible, — as Defdt is entitled to a trial by Jury in the one but not in the other —

Bedard for Pliff.

Action is for ~~a vois de fait~~ an act accompanied with violence & defamation which is more injurious to the Pliff than if done with quietness — and there is no separate conclusion for damages for the defamation but only an aggravation of the act done by Defdt.

—

No. 52

Rolland
v
Bleigner dt
Jary —

Action for Lods & Ventes —

Bedard for Defdt

Has exhibited his titles — qu is admitted — that the ~~lods~~ Lods & ventes, rights due are not within the competence of this Court. — & as to other part he has called his garants who have taken up his defence & pleaded to demand — That the proof of value of articles in the Dem. upon qu the Lods & ventes are demd is improperly made, as that value should be commun bus annis, or at the time the Donation was made in 1783 — That Experts should be named to ascertain this value —

Quesnel for Garants —

Contends for the first garants that there are no Lods & ventes

due

59)

due as by late Mr Dumonts will such tenants as were not worth 100t. in moveables were exonerated from payt. of all rents due to him — Has proved himself to be within this legacy — That at all events he ought to pay only his share of Costs — Has called Deloges his garant — who pleads his poverty also & the benefit of late Mr Dumonts legacy — has proved payt. of Costs of the he owed personally —

Rolland for Pltff.

That evaluation of articles of pension is properly made — That Darry Deft. is a rich man & is not entitled to benefit of Mr Dumonts Legacy — That the value of land shews the property the parties were possessed of — That there is no proof of poverty of any of the Garants. —

Cuvillier
Mc Donald
(p. 66)

} On action for monies P. de heavies on Exception —

Deft. by Ogden — says that he admits having rec. the money but that he gave a value viz Staves for it — That Pltff replies that Staves were afterwards seized at the Suit of one McCauley — the Defendt. here objects that the action is ill brought and that the merits of it ought not to lie on the point stated in the Replication but the question intended to have been brought before the Court should have been stated in the Declaration — That any act done to the Staves after their delivery to the Pltff is at his risk and the Deft. cannot be accountable for them — That Staves may have been seized by collusion between Pltff & McCauley, wherby defts right would be entirely destroyed — this mode of pleading were adopted —

(6)

Ross for ~~Deft~~ Pliff. —

That Pliffs aplication is suffᵗ answer to Defᵈˢ plea she ought to be admitted to proof of what he alledges — viz. that the Slaves delivᵈ by Defᵈ have been carried away by another person by legal process. —

—

Leclaire ~~Pltf~~ vs Debiens — } Action to recover a rente viagere. —

Ross for Pliff says, that his right is well founded on act pled

Bedard for Defᵈˢ.

That ~~Pliff~~ Deft father having children of a first marriage could not make a Donation of the property of the first Community on a change of perping an annuity to the Pliffs wife who was the second wife of Defᵈ father, to prejudice of children of first marriage — art. 279 de la Coutume Potb. Mar. 636 & 637.

Potb. Con. Mar. Nº 628. Nº 629. —

Les Enfans peuvent faire infirmer cet acte par la mort du Survivant Potb. Con Mar. Nº 644. see also Nº 648.

That although Defᵈ. is a party to the Donation, this will does not preclude him from ~~denying~~ the nullity of the act — That the rente & pension represents the land of Defᵈˢ father had no right to give to his second wife being contray to Edict of secondes noces —

The Major who has approved the Donation may come opᵈ st. Potb. Nº 571. Lebrun des Suc. liv. 1. ch. 6. Sec. 1. Dist. 3. from Som 26 to 29 Inclus. Gr. Com. art. 279. & Lou. 1. Som. 54. —

Ross for Pliff.

That the Donation is only for aliment to the second wife to which she is entitled —

That Defendᵗ cannot plead the nullity of his own Act, as he has enjoyed the land under it for upwards of 26 years

2

and acquired a good title thereby —

Bedard for Defdt

That when there is even an express renonciation not to come aft such an act, such renon. is null —

That the Defdt. has paid more than the small praisie is worth, qd belonged to Pltffs father & second wife. —

Gosier
vs
Bourgouins

action on a Note of amount
Pltff says, that his demand is proved by testimony adduced
Defendt says that proof adduced is not sufficient. —

Berthelot
vs
Robillard

action for goods sold
Defdt pleads minority —
Order for proof

Gibb (p46)
vs
Perigaud
vs
Dyon. Gart. (p. 81)

On Defdts motion to join Supplementary conclusions at his garant in consequence of the Jugt rendered in the Cause aft Enquête, assuming the deed of sale from Defdt to Pltff.

Tit. Garant. art 18. Pothier's Com. on Coutume de Paris, tit. 8 — action en garantie is a distinct action from the principale — & both shd not be adjudged on unless both in a state to admit it —

That

That Judgt. even if legal is only an Interlocutory Judgt— pointing out that Defdt. had a right to indemnity agt. his Gart— Poth. Obl. Nº 18. part 4. Sec. 3. art. 2. that where nothing certain is adjudged on there can be no Execution

Ross for Gart—

That Defdt. ought not to be admitted to say before the Court that this Judgt. is illegal — and grounds upon gt. allegation is found are ill founded — Although there is no necessity to join the action of Garantie wth principal demand, yet generally they are so joined, & the parties here agreed to it by joining in their arguments ~~before the Court~~, & in all the proceedings had before the Court —

That cannot demand that the Deed made ~~by~~ Defdt. from Garant be also set aside, as he has pleaded to Plffs action the validity of that act —

Bedard of counsel for Gart

Whatever is given by Court beyond the demand is illegal that the nullity of the act from Dion to Herrijault was never demanded & there may reasons although the Deed from Defdt to Plff was void yet there might be reasons why the Deed ~~from~~ Defdt from Garant was not void — That Defendt. in his conclusions agt the Garant has not demanded that this act be declard void in case that from him to Plff were set aside, as he might have done, & if he has not done it he must be presumed to be satisfied with the act — & cannot obtain but what the Court has already granted his indemnity —

Sol. Genl in reply

That at time Defd. sued the Garant & took conclusions agt him he could not foresee whether his deed to Gibb would have been set aside - & no one can complain of greater injury than he has suffered.

That the conclusions he demands are conformable to the indemnity adjudged to him by the Court -

Stewart vs Guy & Pothiers. T. Saisi (p. 80)

On Plffs motion to examine Tiers Saisi on faits & articles.

Declared for Tiers Saisi - The Plff has no right to ex. Tiers Saisi on faits & articles - he has already given his Decln on oath & cannot be bound to answer further on oath, particularly as he has gone into testimony to contradict the Declaration of Tiers Saisi - That no Interrogs can be admitted to be put to Tiers Saisi to contradict what he himself has said, nor can he be bound to answer so as to perjure himself.

Sol. Genl for Plff.

That by proceedings in the Cause the Tiers Saisi has become a party in the Cause & by the testimony adduced it appears that property of Defd. came to his hands in 1805, and Plff wishes to examine him on oath what has become of that property - Cites. —

2 Bourjon p. 647.

Repse vo Saisie-arret.

Bedard in reply - The authority from Bourjon - shews that a title existed of the debt - qt is not the case here, there is no title to shew that the Tiers Saisi is possessed of Defd. property -

64) Gervais v. Lefevre & Paysan v. Lefevre — (p. 31) (p. 66)

On Pltff's motion that in consequence of Verdict of the Jury finding the Defend^t guilty of the facts alledged agt him, that the Court will order that Defdt. make a reparation d'honneur to Pltff before the Court, agreeable to the Conclusions of his Declaration. —

Ross for Defdt. says, that the reparation d'honneur is an extraordinary remedy given to the party in the Cases of injures, and more of a Criminal than Civil nature, and ought not to be joined with a demand for damages. — That party having submitted the Injury he sustained to a Jury he has obtained the damages which is the only reparation he was entitled to or can now claim —

Bedard for Pltff.

That by law the Pltffs are entitled to a rep. d'hon. for words of defamation spoken of them, q^t is given as a remedy in all Civil Suits & cannot be considered as an extraordinary proceeding — That is every days practice in the Inferior branch of this Court on similar Suits to order a rep. d'hon. to the party injured and damages also — That the only question submitted to the Jury is the matter of fact and the assessing of damages, but this does not take away the other remedy of rep. d'hon before this Court which the party is entitled to besides damages — and it is to be supposed that in assessing the damages the Jury have had consideration to the Pltffs demand for a rep. d'honneur —

Rolland & al
vs
Foretier.
p. 80)

On Defendts mo. on facts & articles to ex. Mr. Dumont, the heir of the late Mr Dumont of whose will the Pltff is Executor & sues in that capacity —

Bedard for Defdt. The party who profits by a Suit may be examd. on facts & art. altho. he be no party to the Suit — cites.
Poth. Proced. Civ.

Rolland for Defdt. The authorities do not apply, that the Pltff here does not prosecute for the interest of Dumont the heir, but to fulfile the testament of the decease. —

Shuter
vs
Bouthillier
& Cuvillier & Co
Intervs
p. 81)

The Plaintiff's action agt Defdt was for recovery of 11 barrels of potashes which came to his Store as public Inspector, ~~and~~ which had been sent to the Pltff from one Randale in upper Canada and marked with Pltff's Initials E.S. — Upon this Suit the Intervng. parties come in and claim the said potashes, alledging, that Randale had also ordered certain potashes to be sent to them from his manufactory in Up. Canada, and that the potashes in question having been put on board the Interv& partys boat at Cornwal and brought down to Lachine, the Interv& party there got possession of them and ordered them to be sent to the Inspection Store of the Defendant ~~as~~ their account.

The parties being upon their respective proofs, the Interv& party offered the said Randale as a Witness to prove their right in the Potashes.

Sol. Genl for Pltff.

There are two material objections to this Witss 1st He is an interested witness — and. 2d. He is called to Invalidate his own act. —

On 1st Objectn. The Witss is interested — if he has promised to deliver potashes to the Interv& party & failed, he is liable to damages, & by his testimony interested to save himself.

On 2d Objectn. The Witss sent an order on 23d. Augt 1806. to one Delisle his Clerk at Williamsburgh to send as soon as he could the potashes he had on hand to the Pltff to mark the bbls E.S. & desire Mr. Grant of Lachine to forward them to the Inspection Store on acct of Pltff — In Sept following Delisle writes to Pltff. that he had sent him by the boats to Lachine the potashes in question — this in proof shews right of Pltff. & wits cannot be admitted to invalidate or destroy the order he gave — cites.

Walton. vs Shelly. 1 Term. Rep. p. 300. —

Saturday 15th April 1809.—

Present

All the Judges.—

Roullard (p. 57.) ~ Parenman } The Court were of opinion that the action could not be supported in the manner as brought, but admitted the Plff to amend his Declaration by discontinuing that part contained in it for the injures verbales.—

Gervais (p. 66) ~ Lefevre — } Judgt. rejecting the motion for reps. d'honneur — but not upon the principle that the party could not have a right to have his damages assessed by a Jury and a reps. d'hon. from the Court, but that ~~that~~ from the circumstances of the Case the Plff. were not entitled to it.— Costs as under £10 Stg. but vt. disburst.—

Pays au (p. 66) ~ Lefevre — } Judgt. as above— Costs as in Cause under £10 Stg.—

Cuvillier (p. 59.) ~ McDonald } parties admitted to proof.—

(67).

p. 57

Lawrence & Dayton
vs
Blackwoods &
others

Judgt.

The Court having heard the parties by their Counsel upon the several accts rendered by the Defendts under the order of this Court and examined the evidence of record — and inasmuch as it appears to this Court that the Defendants as Trustees for the benefit of the creditors of the late Copartnership of Cuvillier Aylwin & Harkness had no legal right to take an assignment of the particular effects of Austin Cuvillier and to hold the same for the payment of the partnership debts of Cuvillier Aylwin & Harkness to the prejudice of the personal & particular creditors of the said Austin Cuvillier It is considered and adjudged that the personal rights credits & effects of the said Austin Cuvillier so assigned as aforesaid be liable and subject to attachment and levy of such execution as the pltffs may be advised to sue out on their Judgt ag[t] Austin Cuvillier for his personal debt as stated in the Pltffs declaration and that the Defendts do expose to the Sheriff of this district such goods and effects so assigned as aforesaid for the purpose of being levied upon such execution as may be issued aforesaid and adjudged upon in respect to the proportionate right of the Pltffs upon the said effects of Austin Cuvillier in such manner as to law may appertain as well to the Plaintiffs as to the several personal creditors of the said Austin Cuvillier. —
The Defdts to pay Costs. —

Pre Barsalou
ou
Claim —

Only questions as to Costs on Claim —

Claimt. says, if costs are adjudged agt. him, he may have same right agt his Garnit. —

Garnit — says there should be no Costs, as at the time the claim was made it was not known whether the ground claimed was within the Military reserves or not —

Sol. Genl. says that after Military reserves were ascertained the parties still proceeded by bring the claim to issue & filing a replication —

—

Longueuil
&
Chareaud
(Ys)

action for Lods & Ventes —

contd. to Monday. —

—

Logan & Watt
v
Radford

action for goods sold

Ross for Pltff — says, that demand proved by testimony adduced —

Sewell for Deft.

No acct. to support declaration for the sum therein specified, but an Invoice & numerous acct. for £300 or £400 — which is different dq. Deft. was not called upon to defend —

Pltff demands only £66 — whereas from testimony adduced it appears Deft. has paid much larger sum to them — & Pltff ought not to be admitted to prove more agt Deft. than he has alledged —

69)

Pltff imporlers on Commission for Defdt charge 55 or 56 for debenture bonds, but do not allow the drawbacks on the exportation of the Stationy.—

Ross for Defdt.—

That action is regular — as by Exhibits filed by Pltff the whole transaction between the parties appear, and the balance of £67 — due thereon claimed for goods sold.—

That overcharges now stated by Defdt. come too late, as after five or six years credit, the Pltffs cannot claim those overcharges from the tradesmen in England.—

Marat (p. 47) vs Laliberté (p. 81)

} action for payt. of monies due on a Sale of a Sloop —

Vrgn for Defdt. says, that action is irregular — the vessel sold belonged to two persons, or about the Pltff sold the part of the absentee without authority & before the Sale was ratified by the absentee as was promised by deed of Sale. brings his action ~~by summary procedure~~ which is irregular & premature.—

Dic. Droit. Vo Ratification

Repve — ve Ib. — —

Regles de Droit D'Antoine — p. 460.—

H ——— 497.

Panet for Pltff.

That if the price of the thing sold were demanded in the name of one only, the authorities cited would apply, but where the absentee joins in the action, he is presumed to ratify the act of Sale —

Vrgn for Defdt. That John Merrit the absentee is not sufficiently represented, as it is not enough to assume his name without shewing some authority from him that he assented to it.—

Burrel. — Wiley. — Action for board lodging &c.

Ross for Pltff. states that his claim is made out by the testimony adduced. — submits serment suppletoire of Pltff

Beaubien for Defdt. that proof is not sufficient — & serment suppletoire of Pltff ought not to be granted. —

Park v Davis p. 81) action for goods sold

Sol. Genl. for Pltff. — That action made out by proof adduced —

Ross for Defdt. —

Complains of overcharges in the Pltffs accounts — moves that depositions of two witnesses adduced by Pltff after closing testimony on his part & after Defdt testimony was gone through be set aside. —

Pothier. v Dorions. & Seminary Oppt Ou the opposition of the Seminary. —

The opponents filed only extracts of the deeds upon wh their claim is founded, to wh Pltff objects, & says, that the original or a copy of the act should be filed —

Swell for Oppt pleads urgency of case —

The Court were of opinion that such Extracts were not sufficient. —

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Raymond v Prevost } action for fees as a Notary –

Bedard for Pltff. – states his demand as Defendt. as Executor of Piccard.

Panet for Deft. – pleads Exception, but says there are matters of fact to be ascertained before hearing on law –

Robitaille v Lamoureux } The Record not compleat – stands over. –

Lasaussé v Burton } p. 47) On Deft. motion that Interrogatories submitted to Pltff & not answered be taken as confessed. –

Sol. Genl. for Pltff.

That the Interrogatories are not admissible, as they tend to shew that Pltff. husband had been guilty of High treason – Such a fact cannot now be admitted, as there can be no conviction after the party's death, he not having been attainted during his life time – That such Interrogatories cannot be put to the Widow of deceased, as it tends strongly to ascertain the turpitude of her husband –

Peake's evidence. p.

Objects to the other Interrogatories as irrelevant.

Rolland for the Deft.

That the Interrogatory whether she is in poss. of any of the property of her late husband, is pertinent, & if she has taken any

of

of that property as Commune, will exclude her from Dower.

Sewell for Defts.

That there is no turpitude can be brought on the Plff by answering to the Interrogatories -

That there are other Interrogatories tending to shew that she derived many benefits from the Estate of her late husband

That the question touching the holding the Seignory by indivis. is also a point pt the Plff ought to have answered to.

Monday 17th April 1809.

Present.-
All the Judges.-

Lilly & Boston
&
Ch. Archambault

cont. p. 30. —

upon further hearing upon this Cause, it appearing that the Pliff had not sued out any writ of Expon at Defds lands and tenements as the law requires the rule Nisi was discharged. —

Longueuil
Cherland
&
Allaire Gart

action for lods & ventes — on 3 purchases

Sewell for Pliff states case that Defdt has called in his Gart who have pleaded for Defd that Pliff has no right agt Defd for the two lods & ventes appertaining to that of Defds purchase — wch he contends, to be irregular. —

Lacroix for Gart. — says, that Pliff does not allege suffit in their Declaration to support their action for Lods & ventes. —

1 That Pliff has no hypp. on land for lods & ventes of Garts

2. That there is no tradition on the acts of transfer filed —

Les ventes & amendes se pourcuivent par action d'enclement
Semaine p. 114 —
Prudhomme p. 116 —
Ferr. art. 81. n 6.
1. Bourj. 291. 131. —

2°. pt. That Pliff has no hypoth. being only a personal not a real rght

Prud. vo lods & ventes. p. 147 ch. 6 —
Ib. p 148.

That there has been no condemnation for the lods & ventes due by the Garant, wch is necessary —

Prudh. Ib. ch. 16. & 22

That the action shd be brought agt the purchaser for his Lods, altho' he be no longer in possn of the property — Art. 81. Cout. Som. 6. p. 1245. —

Duplessis traité des Censives liv. 3. p. 105. —

Discussion is necessary — Art. 82. Cout. Som. 8. & 9. p. 1251. —

3. Point. A Title & possess" are necessary to create Lods & ventes. Prudh. p. 137, 138, 139. & 140. —

74)

Beaubien for Qat.

Declaration is insufficient — title & pos. necessary to create lods & ventes — no such possession, alledged in the Declaration, mentions merely a Sale but no tradition. —

That there is no hypoth. on the lands for the personal right of lods Ventes due by any of Garants - Pltff has only a papier of payt. — To raise hypoth. a Judt. must have been obtained agt the Qat for what he owed personally — Conclusions of Declar. irregular even if action were en Dec. & hyp. —

That there is no tradition under the alledged act of transfer of the property —

Bouvet for Pltff —

That Decln is suffe — as often as ever a deed is passed the right of lods & ventes accrues to Pltff who has nothing to do about tradition. —

Traite des Fiefs par Pequet de Livonniere liv. 3. ch. 8. p. 257.

That lods & ventes are a charge reel on the land & raises a hypoth. to the Seignior —

That 73e art. Cout. gives right of Exhib. of titles, to obtain payt — of his right — thus Pltff contends to be all the titles of mutations of property in the land & for payt of all dues thereon.

cites Fer. on art. 73 — p. 1079. No 6. & 7. —
Id. ——— art. 82. p. 1251. No 9. —
Pothi. des Fiefs. ~~2 vol.~~ p. 336. under Sec. 4. § 1. —

The action agt Deft is real & personal. Feminville. vol. 5. p. 702. —
Seignior has his action agt. person in possession. Pract. de Langes. 2e part. p. 268. —
2. Dict. des arrets. p. 917. 918. vo Droits Seigneuriaux arrerages —
1 Bourjon. p. 293. 294
Lemaitre. p. 104. ——
Repertre de Juris p. vo Lods & Ventes
7 Denizart. vo Droits Seigneuriaux p. 331. —

75)

Ross for Defd. in reply,

That law cited by Pltff do not apply - partials author from Rep. de Jurisp. but Cout. de Paris is different -

That 73. art. of the Cout. applies merely to personal rights -

—

Merriot
v
Mckenzie

} On action qui tam. for penalty - Hearing on Exc.

Ross for Defdt -

Exception is that Th. Porbeau is not a resident of Terrebonne in the district of Quebec as stated in the Declaration

Sol. Genl. for Pltff -

That plea of abatement of this kind can only go to writ writ is suff. if duly served. -

The Exception dismissed immediately by Court

—

(p. 47)
Armour & Co.
v
Diffenbacker
p. 87.

} Action on promiss. Note -

Ross for Pltff. says, that proof is suff. to support his action & states it -

Sol. Genl for Defd. -

Defence to the action is that Defd. signature a forgery - That Defd. never known in any other character than a butcher's boy

boy & not in any mode of dealing to enter into transactions to the amount in the Note —

The usual proof of signature is by persons who have seen the party write — but here the proof is suspicious — Deft's father called aside & question put, if that was his name — & he acknowledged — Contends that the demand was not made if that were his signature. —

That an admission by Deft. even of his signature, not full proof, but only a presumptive evidence

Rep^x vs Confession —

Peake on Evidence. p. 102. —

That the presumptive evidence on part of Defend^t is much stronger that name in quest^n is not signature of Deft^t — That wit. Langharne does not appear to have recollected the person of Deft^t & may have also forgotten the fact —
The actual signature made by Deft^t to fact Sartuls is evidently different from that indorsed on the Note —

Ross for Plff.

The authority from Repertoire irrelevant, this being a case determined by laws of England — & Defend^t admission of his signature is to be strongly taken against him —

77)

Nowlan (p. 48)
v
Martin
& Contra
p. 87.

On rule why Rejs. of Arb. should not be hom.

Sol. Genl. states he has same objection to this report as to the one formerly made — The arbitrs have still allowed a sum of £81. to Capt. Martin as a sett off agt Nowlan which is a debt due by Martin to Col Falconer not by Nowlan — That arbitrs have taken a partial entry in books of acct. of ~~the~~ Nowlan's ~~books~~ agt him & have not taken the whole amount as they were bound, & could not garble it —

That award not conformable to the Interlocutory order of the Court, in stating the facts proved & the conclusions they drew therefrom, but not to decide the Cause —

That £46. only ought to be deducted from Nowlan's acct even on the principles the arbitrs have adopted — the other thirty four heads for pay due to the Individual men mention'd in that sum ought to be credited to the different men & not to Martin — see Exh. of Plff № 4. —

Ogden for Defts

78)

Claim of Cath. Ferrara } Claim on part of Fortification grounds —

Bedard for Claimt. —

States only point to be ascertained in proof — is the locality of the lot mentioned in the deeds under q.l he claims — two persons called to prove it, not being possessed of acts demanded of them under a duces tecum — offers now to fyle true copies of those papers — prays also that this claim be joined to that of the heirs Lecour, as both claims are founded under same titles q.l are filed in the claim of the heirs Lecour — that thereby the present claimant may have the benefit of those titles. —

Sol. Genl. for Commissrs —

Motion objected to as irregular — claims being different ~~claims~~ and between different parties — cannot introduce a body of evidence in the Cause to q.l the Commissrs had no part in taking nor prior communication of it. — That the jonction d'action does not apply here — That evidence now offered by the copies of papers tendered comes too late — should have been filed when claim made — they are not actual instruments of q.l he must have had a knowledge when claim was made —

Claimt does not prove herself heir — locality not ascertained —

Bedard for Claimt says he has filed extr. de baptême of Claimt q.l is enough — That title filed is anterior of order for building the walls. — The locality seems admitted by the Commissrs but certainly not denied. —

79)

Claim of Heirs of Decouvs } Claim on part of Fortification grounds. —

Sol. Genl moves that a paper X filed by one Bornenf a witness be rejected & put from the record — never having been regularly filed by Claimt — That paper was handed to Mr Bornenf & was not produced by him as a Witness & he says, that a copy of it might have been had by claimt prior to making the claim —
He moves also that testimony of several witss be taken off the fyles as tending to prove contents of papers in their possession which are not produced —

Bedard for claimt — That paper X, is produced under a Subp. duces tecum to Mr Bornenf who has in his poss. the livre terrier of the Island, & gives it as an extract from that livre terrier. —

Moves to fyle certain papers mentioned in the testimony of some of the Witnesses —

On merits —
refers to No 31. of his Exhib. — Letters evincing right of claimants —

Sol. Genl — That paper X, appears to have been produced by the Party who had no duces tecum to bring it — That papers offered by testimony of other witnesses also inadmissible —

— on merits —
No possession of the ground claimed ever in the party — but always in the Crown — right also in the Crown —
Only one title referred to in the Claim, but a great number of titles filed, the connection of qr with the claimt right is not stated as it ought to have been in the Claim — no locality proved of land —

Bedard for claimt — says he has clearly ascertained the locality of the ground

p. 63)
Stewart
v.
Guy
&
Pothier Tiers Saisi
p. 83)

Tiers Saisi objects to the pertinency of the faits & articles submitted to him —

Bedard for Tiers saisi, says, that by the Interrog. the Pltff wishes to establish that the Defr. was insolvent, to q. he objects — He also objects to party answering as to transactions q. happened ten or 12 months before the Saisie arret — 11. Interrog. ans. by answers of Tiers Saisi upon his declaration before the Court as a Tiers Saisi.

Sol. Gen. — That having ascertained the fact, that previous to the attachment goods of the Defdt. came to the hands of the Tiers Saisi, he wishes to ascertain from his Interrogatories what has become of these goods. —

p. 65)
Rollard Exer.
v.
Foretier

The Court admitted Defr. to examine Dumont, on faits & articles

p. 44)
Lussier
v.
Choquet
&
Sanguinet Gart.

The Court — dismissed Pltff. action ag. Dfdt. he having proved a possession of 30 years & upwards in the land in question — And between Pltff & Garant, from a defect in proof — order, that a Surveyor ascertain whether the land in dispute be in the arriere fief de Bleil sold by Gart. to Pltff, & how much it consists of. —

p. 56)
Lacroix
vs
Bouvet
&
Morin oppt
&
Leheuppe oppt

Court directed a Judgt. of Distribn — allowing to Leheuppe the amount of her claim as being prior to the right of Dower of Defendr. wife — to Pltff who comes in after the right of Dower the amount of his claim also upon giving security to bring back the same in case Dower shall take effect — the balance if any to remain in the hands of Morin the purchaser conformably to his opposition to answer claim of Dower, but on paying Int. —

p. 53)
Gruette
vs
Noreau

Action dismissed – The Court being clearly of opinion that according to 223d. art. of Custom – no right whatever accrues from the obligation in question either upon the wife, or her heirs to pay it. –

p. 70
Park
vs
Davis

From the uncertain state of the testimony & proof adduced, & the appearance of overcharges in the account of the Pliff. The Court ordered the same to be sent before before Experts. –

p. 65)
Shuter
vs
Bouthillier
& Cuvillier & Co
Intervs

The Court rejected the testimony of Randal – it appearing that he had given an absolute order for the delivery of the potashes to the Pliff – that the Potashes were afterwards directed & sent to Pliff under this order, but upon the promise & undertaking of the Intervs Party to John Grant, the Store keeper at Lachine in whose boats the potashes came from Up. Can. to his Stores, to save him harmless, that the said potashes were delvd. by Sr. Grant to the Intervs party & and it would therefore be dangerous to admit Randal to give testimony that might invalidate his own Contract. –

Robitaille
vs
Marchand

Cause heard 8t. Feby. last. –
The Court dismissed the Defendr. Exceptions – The Pliff. authorities being adopted by the Court. –

p. 61)
Gibb
vs
Merigaret
& Doyon Gart.

The Court rejected the Defdts. motion for making supplementary Conclusions agt. the Garant, which they conceived to be inadmissible – the only recourse of the Defdt being to proceed in conformity to the conclusions already taken agt. the Garants, & in the present case the Court conceived to be sufficient to grant to him all the recourse necessary. –

p. 69)
Merrett & al
vs
Laliberté

Defdr. Excep. dismissed – The party absent at the time the Contract was made, having joined in the action thereon agt. the Defdt. was a sufficient ratification of it. –

(p. 47)
Young
vs
Blackwood
& al. Trustees

Judgt. ordering Defdt. to account.—

(p. 29)
Sarault
vs
Marnier
& Noels & others
Garants.—

The Exception raised by the Garant Bourthelier being, that he had warranted the pignon to be mitoyen but not the whole wall or gros mur — The Court dismissed the Excep- being of opinion that according to the common acceptation of the word pignon in all deeds, the whole wall is comprehended & not merely the faitage.—

(p 37)
Flammand
vs
Chevallier.—

The Court were of opinion, that although the Pltff had taken out a licence as an auctioneer under St. 45 Geo. ch. yet that such licence did not warrant his travelling from town to town and from place to place with his goods for the purpose of trade & selling them under such licence — That by so trading and travelling he became subject to the requirements of the Act of 35. Geo. ch. and ought to have taken out a licence as a Hedlar or petty chapman, which he was bound to shew to the magistrate — That therefore the Magistrate & Defendt. were justifiable under the law in having seized his goods — and dismissed the action.

(p. 50)
On Inform.n of
Stearnes qui tam
vs
Tobacco
&
Bingham
claimt

The Court were of opinion that as the Carts & horses of the Claimt had been employed as being a Common Carter to convey the Tobacco from St Johns to Laprairie, there was no ground to have seized them, as nothing appeared whereby Claimt had a knowledge or was assisting in forwarding smuggled goods — the horses & waggon be deld. up to claimt with Costs — The Court even inclined to think that no carriages &c. were seizable but such as were employed in the importing the goods into the Province — The testimony of Stearnes the Informt. was rejected as being an Interested witness

see. 4. Suppl. to Viner. Tit. Evidence
2 vol. Evans's Pothier. p. 314. —

Tuesday 18th April 1809.

Present.

All the Judges.

Stewart (p. 80) & Gurd & Pothier

The Court were of opinion that the Interrogatories proposed by the Pltff to the Tiers Saisi, were pertinent, & ordered him to answer thereto on the 16th. May next. —

Proulx & Patris & Gosselin & Riopel p. 87

Two actions evoqued from the Inferior Court — upon a demand as to Defts to name Experts to settle a Cours d'eau for draining the lands of the parties — the Causes Joined —

Virger for Pltff Proces verbal made — the Interessés called in, upon of them have evoqued the

Ross for mis en Cause — That the Causes were improperly joined in the Inferior Court without the Consent of the mis en Cause, or of the Defendants — That parties by connivance have named Experts to make that kind of P. Verbal they wished to the prejudice of the mis en Cause — That rule of reference was extended on 12th Sept. last to a further day & on 13th a long & complicated P. Verbal was made up, which could not be done in such short time if the Experts had not made up their opinions before — That the labor ordered to be done by the parties in the P. Verbal is enormous and unnecessary — Demands that P. V. may be set aside and new Experts named —

~~Virger for Pltff~~ & Bedard of Counsel — That Defendt cannot

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cannot complain of the two Causes being joined by Judge of the Inferior Court which is final — That the evocation was made after the Causes were joined the Proces Verbal made and the Interessés called into the Inferior Court — That if a new visite be granted, and the report already made should be confirmed the Interessés ought to bound to pay the Costs thereof. —

Giroux. v Lafleche

action upon a deed of Sale — for a term of pay^t due —

Lacroix for Pl^ff — says, that Pl^ff claim is made out by the Exhibits filed, upon which he prays Judg^t — That only question is respects Costs, for which he also claims a right. —

Viger for Defdt

The whole question turns upon the costs of the action the Defend^t alledging that he offered the principal due prior to the institution of the suit. —

Lacroix for Pl^ff.

That the offer made was to the attorney & not to the Pl^ff who alone could give a discharge for the money — That it does not appear even to whom the offer was made — Pl^ff has no knowledge of the money having been deposed in the hands of the prothz — As to the deeds claimed by Defend^t — Pl^ff has given one of 1794 w^t acquittance thereon — & as to other deeds there is stile a sum of 1000^t by y^e Def^t might run no risk —

85.

Cartier. — vs. Degray — & Douville opp^t

On opposition of Douville afin d'annuller —
The Pltff admitted the Opposition —

Dyon. — vs. Leduc. & Dyon. — vs. Beique.

The two actions joined by consent of parties —
The first action for £7. 10. on an acte de partage.

Bedard for Def^t pleads for Excep. that there is lesion of more than tiers au quart. —

Wednesday 19th April 1809.—

Present
All the Judges

(p. 83)
Proulx vs Patris. — Gosselin vs Riopel — New Experts were ordered to be named — viz: two by the Pltff. two by the Intervening party & the fifth by the Court — to report by first day of next Term. —

(p. 77)
Nowlan vs Martin — The Court confirmed the report of the Arbitres — each party to pay his own Costs. —

(p. 75)
Armour & Co vs Dieffenbacker — The Court were of opinion, under the circumstances of the case and the suspicion of forgery of the Note communicated to the Pltff by being informed that the Indorsment thereon was not the hand writing of the Defendt — that the confession obtained from the Defdt that the name indorsed on the note was his hand writing, was not alone sufficient to support the action, as no part of the note was shewn to him, nor any thing said respecting the matter, that could shew, that the said Signature respected the Note in question or any transaction binding on Defdt — The confession here did not come within those mentioned in the books. — see. Kyd on Bills. p. 271 — cits. Cooper v. Leblanc. 2 Str. p. 1051 — — 4 Esp. N. P. Cases. p. 226. Leach. v. Buchanan, — Where the admission appears to have been made not merely to the Signature but to the subject matter connected with it —

Judge Ogden, dissented from this Judgt —

The Case afterwards appealed, and the Judgt reversed

Thursday 20th. April 1809.

Present

all the Judges. –

Payan. –
vs.
Chaillé. –
&
Chaillé Oppt –
and
Lacroix. –
vs.
Payan. –
&
Chaillé Oppt

Cause heard the 15th Febvy last

The Court were of opinion that the title of Payan in the land of the Defendt had not been perfected under the Sale by the Sheriff, inasmuchas the said Payan had neither paid the amount of the adjudication nor given Security to the Sheriff for the same, nor had he obtained from the Sheriff a title confirming the property to him – That the title to the land was not therefore so far vested in the Pltff as to preclude the equitable right of the Defendt and to ~~debarr~~ prevent him to claim the same by shewing a demand at the Pltff by Indt sufficient to extinguish that obtained by the said Pltff at him the Defendt – Upon this principle the Court adjudged that the land should be restored to the Defendt by Payan with the fruits thereof and that the seizure thereof by Lacroix be annulled the whole wt. Costs to Chaillé –

Judge Panet dissented from this Indt. being of opinion that

that an adjudication or Sale by the Sheriff is alone sufficient to convey the premises Sold to the adjudicataire who from that moment becomes responsible for all accidents or losses that may befall the property so sold as being the proprietor thereof. —