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June Term 1809.

Thursday 1st June 1809

This being the Fête Dieu, and considered as a fête d'obligation, there was no Court held

Friday 2. June 1809.

Present

All the Judges.

King & al'
vs
Bingham

The Defendt moved for security for costs from Pltffs they being aliens & not resident within the Province.—

The Pltffs answer, that on the last day of last Term the Defendt entered his appe, since which time he has not filed a plea as by the rules of practice he is bound to do in vacation, and is now therefore in default and cannot prevent the Pltffs from proceeding by his application for security for costs—

The Defdt replies that he may ask security for costs at any time before plea filed, that during the vacation he could not

not move for such security nor before this Day & is therefore in time to obtain it — that regularly he could not file his plea and demand security afterwards — cites case. Murray v Harrington. 8 Ap. 1809.—

The Court were of opinion that Defendts motion should be granted, but without determining on the point whether the Defd was in default by not pleading according to the rules of practice.

Saturday 3. June 1809

Present

All the Judges

There was no business before the Court except the ordinary motions.—

Monday 5th June 1809.—

Present

The Chief Justice &
Mr Just. Reid

Sibberson v Coffin. — The Defdt was arrested and held to bail on the affidavit of Decius Wadsworth, stiling himself the Agent and Attorney of the Pltff, and as no power of Attorney was filed, he now moved that

+ residing out of the Province

that the Pltffs action should be dismissed as there was no sufficient authority in the person instituting the same.—

The Pltff answers that he has filed the agreement upon which the action is instituted, which shews, that the attorney instituting the same is porteur des pieces and entitled to prosecute the suit — that besides there is an order written by the Pltff at the bottom of said agreement whereby the persons charged to receive the potashes on his behalf are directed to conform in all things to the directions of said Dennis Wadsworth & brothers, which shews the power vested in him by the Pltff.—

Defdt replies — That no power appears to have been given by Pltff to institute the present action, the paper filed only regarding the disposal of potashes when delivered.—

Burnside vs Cuvillier & Blackwood & others Oppts

The Pltff made a seizure of sundry goods chattels & effects in the hands & possession of the Defdt. his debtor, to which seizure an opposition was put in by Blackwood & others Trustees to the Estate of Cuvillier, claiming the goods seized as their property.—

The Pltff admitted the right of opposition in the Trustees and consents that they may have main levée of the effects seized, but says, that it ought to be without Costs, — as the finding the goods in the possession of the Defendt his debtor was a sufficient justification to the Pltff for seizing them and requires from Opposant a proof to shew the property in

him

4)

him, and even if such proof were made it must be at the expence of the Saisi and not of the person Saisissant.- cites. Poth. proc. Civ. ch. 2. §. 4. oppos.n afin de récréance.—

Ross for Oppt.

The Pltff had notice at time of seizure that the effects in question did not belong to Deft, and it was at Pltffs risk if he proceeded— this appears by return of Bailiff.-

The Pltff replies, that he had no such notice, & if he had he was not bound to believe any Story Deft might tell respecting the property found in his possession.—

Berthelot
vs
Esty—

The Defendt pleaded for Exception that he was improperly sued under the title & addition of a Shoemaker, whereas he is a merchant and trader, whereby he is deprived of the benefit of a Jury trial and the means of setting up an Incidental demand.—

5)

Tuesday 6th June 1809.—

Present

All the Judges except Mr Justice Panet

Hibberson vs Coffin.—

The Court were of opinion under the circumstances of the Case which they conceived ought to be strongly construed in favor of the Pltff, that the directions given by the Pltff in writing respecting the potash and delivering the agreement therewith to Decius Wadsworth, was a sufficient authority to said Wadsworth to institute the action, but that a power of Attorney would be necessary to be produced from Pltff to said Wadsworth specifying in a more particular manner the authority vested in him & confirming the proceedings had by him, before Judgment would be given,— that in the mean time the Cause might proceed.—

Burnside vs Cuvillier. & Blackwood & others Oppts

The Court were of opinion that no Costs ought to be allowed to the Opposants on the admission of their Opposition, as the finding the effects in the possession of the debtor was prima facie evidence of a property in him and justified the Seizure, and the Pltff was not bound to receive or be bound by the Defendr notice that the effects were not his property at the time the seizure was made.—

6)

Lasaussée vs Burton — } action for dower on lands possessed by the Defendt — The Defendt amongst other things pleaded that the Pltffs husband became a traitor by joining the rebel army in America whereby his lands became forfeited to the Crown and the Pltffs right of Dower lost, for proof of which fact the Defendt moved to examine Pltff on faits & articles — For the Pltff it was contended that she ought not to be bound to expose the treason or turpitude of her husband, as her honor & character were connected with his — But the Court thought that where a Civil right was claimed which might be affected by the fact sought to be proved, the Pltff ought to be held to answer as far as she knew respecting the same, and directed that she should answer accordingly — Mr Justice Reid was of a different opinion —

Berthelot vs Estey — } The Court made an order for proof of the fact stated in the Defendants exception —

7)

Gillespie et al
v
Auedjo et al
&
Brehaut opp.

Hearing on exhibits and proof made under the Interlocutory order of the directing the Opposant to render an account of the monies due by him to Ls. Dumiere on the purchase of a wharf which said oppost made under the deed of sale of

Ross for oppt.

The account Curt. between Dumiere & Brehaut, (Ex hib. No 3) made and signed by Dumiere, shews the mortgages there were on the said Wharf & for the payt whereof the Opposte is liable, and he therefore is entitled to retain in his hands the monies due on the said purchase as the whole balance thereof is not sufficient to pay Ls mortgages — That Pltffs now are claiming the rights of Dumiere, and must therefore be bound by his acts and admissions, by which it appears that he is indebted to the Opposte instead of having any claim against him, and therefore his present opposition for the debt transferred to him by Duchenean Stands unsatisfied —

Stew

Stewart for Pltff.

The Opposant has pleaded payt. of all the monies he owed to Dumiere — but of this he has made no proof. That signature of Dumiere respecting mortgages on the property cannot bind his Creditors, and even if such mortgages did exist it does not appear that the

Opspte

(8)

Oppos.t has ever been called on to pay them —

Farrar
v
Tanner —

Action on promissory note indorsed to pltff. —

The Defdt. pleads for exception that Pltff cannot maintain his action, inasmuchas at the time he obtained possession of the note the Indorsment thereon was not filled up but remained in blank and as the parties were not merchants, traders or bankers the Pltff had no right to fill up the said indorsments — That the fact alledged is evident, as Pltff was dismissed from a former suit instituted by him against the Defendt. on the same note by reason of the Indorsment thereon not having been filled up — and as the said note has remained in the hands of the Pltff ever since, the present indorsment must have been made by him, which he had no right to do. —

The Pltff that a blank indorsment gives a right to the Indorsee of the note to fill it up, and it has been so adjudged in this Court — cites. Hale. v. Austin. — 1795.

9/

Wednesday 7th.
Thursday 8th. } Witness days.

Friday. 9th. June 1809.

M. Justice Panet absent

Nagar. vs. M'Cauley } The Pltff under a Saisie Revendication which he sued out had seized a quantity of Staves in the possession of the defendt. which Pltff claimed as his property, and now moved that the Staves so seized should be delivered over to him upon his giving security to answer the Judgt of the Court thereon — In support of motion it was stated, that defendt did not come forward to make the motion to have delivery of the Staves, which might be considered as of a perishable nature, as the market for them was uncertain, & the detaining them under seizure, until the determination of the Suit, a certain loss to both parties.

The defendt says, that the Staves ought to be delivered to the person who has the greatest apparent right, and that this is the Defendt — in whose possession they were as the legal owner at the time of the attachment, & — according to law and the decisions of this Court constitutes a sufficient right to entitle the defendt to retain the Staves.

That

10)

That defendt ought not to be compelled to use this right until he finds it convenient for himself to do it, nor to claim it at same time Pltff has thought fit to do it — but ought to have a reasonable time for so doing. —

Robitaille. — vs — Leprohon. —

Action by Pltff as donee of the late Pre Marchand agt Defendt as Curator to the person & Estate of said Pre Marchand to render an account —

The Defendt among other things pleads, that the Pltff was never seized of the objects & credits said to have been given by the deed of Donation and now demanded, the same not having been delivered to him in the life time of the donor nor by the said Pltff notified to have been given & delivered to him as by law required, and therefore he cannot support his action agt the defendt — That present exception has been decided in a Cause between same Pltff & one Marchand, but conceives there is a distinction to be taken here inasmuches the Defendt is not the debtor of the monies demanded, but acting as Curator —

The Pltff refers to decision on cases of Robitaille v Marchand 17 April last — Cases exactly same —

11)

Dom. Rex v. Delery — } On Certiorari, for removing a proces Verbal of the Grand Voyer for the construction of a bridge and cleansing a river above and below the bridge, which had been homologated by the Court of Quarter Sessions

The Gr. Voyer sued out the writ of Certiorari and as a ground of Objection to the Judgt. of homologation, stated, that the Court of Quarter Sessions had exceeded their power by changing his proces Verbal & ordering that the river below the bridge only should be cleared out, & rejecting the other part, and this without any opposition on the part of the persons concerned, and praying that the Judgt. of the Court of Quarter Sessions should be quashed

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Auldjo & al v. Jordan & al & Claus Oppt — } Sir John Johnson was produced as a witness on the part of the Curator to the Estate of the late Robert Russel on the issue between him and the Opposants — It was objected by the Opposants, that the witness was their Uncle & not there competent —

For the Curator it was said, that in this case he was a <u>temoin necessaire</u>, he having been named the Attorney of the Opposant, and it was impossible to prove the power given to him or the acts done by him but by his testimony, and it was the fault of the Oppost. to have named his relation as his Attorney in order to avoid such proof being made —

The

12)

The Oppos^{t}. answers that the facts to be proved by the testimony of Sir John Johnson may be proved by other witnesses, which precludes the necessity of a temoin necessaire.—

Coiteux
v
Hogue—

Action on deed of Sale.—

The Defend^{t}. for exception pleads, that Defend^{t}. has been sued without any addition so as to designate his person or profession.—

Pliff answers that he has given him the addition of habitant, which Def^{t}. has assumed in the deed of sale upon which the action is brought—

The Court dismissed the Exception, as frivolous, with Costs —

Glinel
v
Laverge
&
Henry—mis
en Cause —

On rule to shew Cause why the adjudication made of the Defendants land to the mise en Cause should not be set aside by reason of irregularity of the proceedings upon the seizure q^{t}. had been made thereof—

The witnesses on the part of the pliff had been heard, and it was now moved by the mis en Cause, that a day might be given him to support the truth of the certificate of the criees made by the baliff Durocher, and the return of the Sheriff thereon, against which the Pliff had produced testimony

in

in order to impeach the same and to shew that the publications had not been made as therein stated — that as the return of the bailiff and Sheriff appeared to be regularly made, the mis en Cause, did not come prepared to support them by any testimony, nor did he expect that the Pltff would have produced any testimony to invalidate the same, or that such testimony would have been received —.

The Pltff objected to the motion, and says, that he stated in his reasons agt. the return, that it was irregular, and that the publications had not been made as therein mentioned, and therefore the mis en Cause should have come prepared to support it —

Young
vs
Blackwood
& al —

On the acct. rendered by the Defendants as Trustees to the Estate of Cuvillier —

The Pltff states, that from the account rendered it appears how much is due to and by the Estate of Cuvillier, as also the monies received and dividends paid, that it now only remains to ascertain what proportion or dividend the pltff shall receive so as to put him on the same footing with the other Creditors, for which he now prays Judgt —

The Defends say, that Pltff cannot claim any

specific

14)

specific sum of money as his dividend, as it cannot be ascertained what it may be, there being other Creditors who may come forward and claim in the same manner if present pretention should be allowed, and ought therefore to be sent to take his dividend from the trustees, otherwise the assignment in trust will be of no avail but become effectually annulled, as it will be in the power of any creditor who has not signed the deed of assignment to come in and claim his dividend to the prejudice of those who shall have signed it—

On 20th June

The Court ordered all creditors of Estate of Quellet & Co to file their claims at Prothy's Office by first of October next, & for this purpose ordered notification to be given in the Montreal Gazette

15)

Saturday 10th June 1809

Present.

Ogden & Reid. Justs

Robitaille. v Marchand & ux

The Pltff moved that the Interrogatories upon faits & articles submitted by him to the wife of the defendant should be taken as confessed, as she had failed to appear and answer thereto at the time appointed for that purpose

The Defendt objects, that the Interrogatories were not regularly served, no copy having been personally signified to his wife, but to him only, and that in Court yesterday—

Lempriere v Saliberté

Action on deed of Sale of the Bark Rover to Defdt—

The Defendt says, that there is no proof of the delivery of the vessel to him by the Pltffs — it is said in the agreemt that the Defendt was to have possession of the vessel on the day of the Sale, but this has never been carried into effect — There even no agreement, nor proof of Agreement for Sale of said vessel, before the Court —

The Pltff replies, that Defdt has admitted the Sale & delivery by pleading payment of Pltff demand, and if any proof be now requisite it must be on the part of Defendt—

16

Tibbetson
vs
Coffin.

On rule obtained by defendt to shew Cause why he should not be liberated from his imprisonment and admitted to file a Common appearance, as the affidavit under which he was arrested was not made according to law.

Ross for Pltff.

This question has been already decided - The Defendt moved that Pltffs action should be dismissed as there was no power of Attorney warranting the prosecution thereof by Decius Wadsworth stiling himself the attorney of the Pltff - and upon that occasion the Court were of opinion that there was a sufficient authority in D. Wadsworth for this purpose, and allowed the action to proceed - That D. Wadsworth in his affidavit stiles himself the attorney and agent of the Pltff. as having been vested with that power from Pltff, and the paper delivered to him by the Pltff has been recognized by the Court as giving sufficient authority to institute the action, and must therefore be considered as sufficient for making the affidavit.

Ogden for Defdt

That Court has not declared that paper produced by Pltff Wadsworth was a sufficient power of attorney from Pltff to him, but have suspended the motion and allowed time to produce a regular power of Attorney from the Pltff - That on this acct the Defendt ought to be liberated from prison and admitted to file a common appearance, as - Wadsworth, although he may have been warranted to institute an

action

action against the Defendt yet he had no power to arrest the Defendt which is an extraordinary proceeding and required a sufficient authority from the Pltff to warrant it – That the paper filed by Pltff is not equivalent to a letter from the Pltff, q.d was considered as a sufficient authority to the attorney to whom it was addressed, for all the matters contained in that letter – cites. Glover. vr Haughton. –

Sewell of Counsel for Defendt states, that there is at present no attorney regularly named before the Court from the Pltff, and the law requires such power, & it has not been determined that the paper produced by Mr. Wadsworth is a power of Attr. To give time to produce such a power of Attr. would be extremely hard on Defendt who must now lie in Gaol till October next, and tho producing a power of Attorney from the Pltff now will not prove that D. Wadsworth was his attorney at the time of suing out the process in this Cause, nor legalise his proceedings

---

Chaboillez. vr Roi. — & Perinault, & Durocher. Garnr.

On rule obtained by Durocher on Defft. to shew cause why he, Durocher, should not be admitted to answer to the Interrogatories upon faits & articles which had been sent to Quebec in order to procure his answers thereto while at that place but not having been examined there appeared when notified, he now prays to be admitted to answer without payt of Costs owing to the circumstances of the Case. –

Rolland for Defdt –

That it is an established rule that the party failing to answer on the faits & articles, when required must pay costs before he can be received to answer – cites. Poth. pr. Cv. ch. 3. art. 5. §6. – Ordr 1667 tit. 10. art. 4. a –

That

That if Durocher had even had a sufficient excuse to give for not answering to the faits & articles as demanded, yet he was bound to have appeared before the Judge appointed for taking his examination, and given that excuse in person - cites 1. Pigeau. Proced. Ch. p. 238. -

Vigé for Defdt-

The Affidavit made by Durocher condemns him, he says that he gave instructions to an Attorney to appear for him before the Judge and assign the reasons why he, Durocher could not answer to the faits & articles, and that by some misunderstanding the Attorney failed to appear - which must be considered as the default of the Defendr - who ought to have appr. in person and given a sufficient excuse - He says also that he wanted papers to enable him to answer - but does not point out what papers they were. -

Bedard for Durocher. -

All the Costs Durocher can be condemned to pay are the costs on the default, but not of the Commission, because it was the same thing to the Defendt whether he answered or not, the expence of the Commission must be paid by him - That it was the wish and intention of Garant to answer to the Interrogatories at Quebec, had he been possessed of the necessary papers to enable him to do it, but these papers being at Montreal, he employed an Attorney to appear before the Judge and give in his reasons, & trusting that this wd have been done, he did not think it necessary to attend in person. - That evening before his departure from Montreal he gave notice to Defendts Counsel of his intended Journey to Quebec, in case he should wish to examine him upon faits & articles, but the Attorney declined it, saying it was too late. - That no greater costs have accrued than if the Garant had answered. -

19)

Monday 12th June 1809.—

Mr Justice Panet absent.

Glinel
vs
Laberge
&
Henry, mis en Cause —

The motion made by the mis en Cause was granted.—

Dom.s Rea
vs
Delery —

The Court were of opinion, that by St. 36. Geo. 3. ch. 9. § 20 — (or road act) the Court of Quarter Sessions had the power to ratify or reject the whole or any part of a Proces Verbal of a road or bridge laid before them by the Gr. Voyer for homologation — That in the present instance they had only exercised that right by rejecting a part of his Proces Verbal and had not exceeded it as pretended by making a new Proces verbal or directing something different to be done — The Certiorari was therefore quashed and the Judgt of the Sessions confirmed. —

Chaboiller
vs
Roi —
&
Durocher &
Perrault mis en Cause —

The Court were of opinion that Durocher ought to have attended personally before the Judge and answered to the Interrogatories or give his reasons why he could not, that being in default in this respect, he must pay the Costs before he can now be admitted to answer. —

Hibberson v. Coffin —

The Court were of opinion that the defendt. motion ought to be dismissed, as the point in contest respecting the power of Attorney had been already decided on the former motion made by the defendt. the Court considered the paper in question as a sufficient authority for suing out the writ of Capias in this Cause as for carrying on the proceedings agt. Defendt.

Nagar v. McCauley

The Court gave Judgt. that the Slaves seized should be delivered to Pltff on giving security provided the Defendt. did not on or before the 17th. inst. gave the like security in order to retain them himself. —

Maillard vs. Roi. —

On an Incident de faux pleaded by Defendt.

The action was to procure a title from the Defendt. to a lot of ground which the Pltff alledges to have purchased from the Defendt. and in consequence of Defendts. refusal to pass a deed the Pltff previous to bringing this action caused a protest to be made agt. the defendt. stating, that Pltff had tendered the purchase money of the lot and demanded from the Defendt. thereon a title deed to the same, which he refused —

Upon

Upon this Protest the Defendant raised an Inscription en faux, and as the grounds thereof alledged that the whole facts stated in the Protest were false — The parties having — adduced their respective proofs, were now heard thereon. —

Rolland for Defdt

All the facts mentioned in the protest are untrue, as well the tender of money, the demand to execute a title, as that two notaries were present when protest was made — refers to the testimony adduced — That presence of two notaries is necessary in all acts or protests regarding the tender of money — cites — Denisart. vo Notaire. No 79. Sec. 3. — Ibid. vo Protet. No 2 — as to offres de deniers. — But even if this were not requisite, from the testimony adduced it appears that the contents of the act are untrue and not deserving of any credit, therefore it ought to be rejected. —

Ross for Pltff

The facts stated in the protest are true, in all essential points — for this refers also to testimony adduced — That the presence of two notaries is not essential to the validity of this kind of act more than any other, the intent of a protest is merely to put the party en demeure, and this may be done as well by a huissier as by a Notary cites. Repve de Jurisp.ce vo offre. & Demeure. —

Viger — in reply denies that any Protest was ever made by a Notary, who on the contrary in consequence of some conversation qt he had wt Defdt drew up a paper calling it a Protest, qt is a dangerous practice — & the more so as it is untrue

22)

Rolland
vs
Foretier
&
Labelle
Garant.

Action for lods & ventes —
Rolland for Pltff.

The only question now before the Court is respecting the lods & ventes due on Defendt. purchase, and on parchase of the Garant Labelle — The Defendt admits that the lods & ventes on his purchase are due — As to those on Labelle's purchase they are also due — he was Tutor to the minors Chauret, and upon a petition presented to the Judge obtained leave to sell the land in question then the property of the said minors — The lands were adjudged to Labelle himself as highest bidder, & the act of adjudication appears made to him in his own private name — he afterwards sold the land as his own property to the defendt — The purchase of the said Garant thereon gave a title to him the validity of which the Pltff is not bound to examine, it being a titre translatif de proprieté which is all that is necessary to create lods & ventes to the Seignior, and agt. which the sd Labelle cannot be admitted to allege any thing, as it is his own act —

Quesnel for the defendt. says, he owes the lods & ventes upon his own purchase which amount to about £9 — and for which he ought to have been prosecuted in the Inferior Court, & if Costs is given agt. him here, no more Costs ought to be allowed than in the Inferior Court

Bedard

23)

Bedard for the Garant Labelle—

That the adjudication of the land to Labelle when tutor was wholly nulle and void and could produce no effect either as to himself or others, as a tutor cannot under any pretence become purchaser or adjudicataire of his minor's property and it is besides impossible that he could have been the seller and purchaser also— Such sale and adjudication can be considered only as for the benefit of the minors.— claims his Costs on the action he was under the necessity of suing out ag[t] Jean B[te] Labelle as his Garant, as Plff now admits these lods & ventes to have been paid before the action brought—

Beaubien for Jean B[te] Labelle, claims his costs in defending the action en garantie.—

Rolland for Plff— in reply says, that by Defend[ts] plea the nullity of the ~~[illegible]~~ of Jos. Labelle is not pleaded and it cannot now be done by verbal argument— That by purchase of Jos. Labelle of the minors land there was a change of vassal, q[l] is sufficient to raise lods & ventes to the Seignior.—

(24)

Lagorgendiere vs. Duffy. v. Leveque & al.

Action to obtain a licitation of the property of the Community between the Pltff and her late husband

It having been pleaded in defence that the Pltff during her enjoyment of the Estate had committed great waste thereon and allowed it to go to ruin, and therefore in order to ascertain the damage done in this behalf Experts had been named, and practiciens to settle the account to be rendered by the Pltff to the Defendts of the property she held of the said Community for which she was accountable to the Defendts his heirs—

Stewart for Pltff— took several objections to the report of the Practiciens—

1st. on Chapitre de Depenses.—

The paymt made to Pltff husband of 325£ part of the Pltff's propres, in paper money at a deduction of 75 ℔ Cent, which deduction has been made by the practiciens without any proof, they have assumed the fact— and even if this sum had been paid in paper money, if it was not a legal paymt the Pltff husband was not bound to take it, if on the contrary, paper money was a legal tender ~~this deduction~~ ought not to be made.—

2. On Chapitre de Reprises.—

It is said that the Pltff ought to have recovered a debt of one Baieulle of 600£ which was due by him to her husband as he had property in this Country upon which the money might

might have been recovered — But there is no proof that such debt existed, nor that Pltff had a knowledge that Baieulle had property in this province - he Baieulle being himself resident in France. —

As to the sum of 3478ᵗ deducted in reprises, the practiciens have ~~not~~ allowed, on the principle that the persons owing the money are still alive and may be recovered from them — The Pltff contends that this deduction ought to be made as stated by Pltff — as there is no proof of the existence of these debts at the time of the decease of her husband, they are mentioned in a brouillard or day book kept by her late husband, and the presumption is that the said debts are not due, not being mentioned in any other of the books of her late husband. —

That practiciens have allowed a sum of 37,777ᵗ. 15ˢ as the amount of the propres fictifs of the Pltffs late husband, whereas it ought to be only 30.904ᵗ. 3ˢ — because there was no proof before the practiciens of the amount of those propres fictifs which were possessed by the Pltffs late husband at the time of his marriage with Pltff. — The only proof made in this respect is the confession of the Pltff which ought not to be extended beyond ~~that~~ what is therein mentioned — ~~That~~

That the propres fictifs ought to be limited to 30,904ᵗ. 3ˢ instead of 34,000 mentioned in the marriage Contract, inasmuchas as part of the debts due to the Pltffs late husband and which made part of the sᵈ propres fictifs, amounting to 3095ᵗ. 3ˢ. 6ᵈ were never recovered, as the vouchers relating thereto are still in the possession of the Pltff — and the Community is answerable only for the sums which it has really received - cites. Lebrun. Traité de la Comᵘᵉ p. 382. - and 1. Bourjon. p. 455. —

That

That the marriage Contract ought not to be taken as a proof that Pltffs late husband possessed the amount of 34,000# in debts and effects, as it would be making him a witness for himself, and bind the Pltff upon his bare assertion of a fact the truth or falsity of which she has no means to ascertain - That the legal mode of ascertaining the amount of the propres fictifs at the time of the marriage was by making an Inventory of them which ought to be annexed to the Contract - the omission of this formality is against the Pltffs late husband, and he alone had power to do.

The practiciens have assumed that the sum of 34,000# mentioned in the marriage Contract are livres Tournois, without the least proof and even contrary to the admission of the Defendrs by which means they have increased it 37.7.7#. 15s. - they also assume that the payments made on acct of the said sum of 34,000# were livres Tournois, which was not the case -

3. As to Interest on propres fictifs. -

It is a question whether Interest on the propres fictifs ought to be allowed from the time of the decease of the Pltffs late husband, or from the time of the demand - The practiciens have allowed Interest from the time of the decease of the late Mr Duffy - but in this they are wrong, as the law does not allow it - Interest is due upon the deniers dotaux to the heirs of the wife, but the same right is not allowed to the heirs of the husband - cites, Lebrun. Traité de Comté liv. 3. ch. 2. - dist. 3. N°. 36. -

1, Charges of Account

The Pltff charges 240#. for the acct she has rendered, qch is generally allowed - cites Stile Civile - to shew that the acct is rendered at the mutual expences of the partys -

Rigé for Defdt—

That marriage Contract must be taken as a proof of all the matters contained in it, and therefore the Pltff ought to have made proof that the 34,000# therein mentioned were not received.

That the Pltff after the death of her husband became the depositary of all the property of the Commty and ought to have recovered the debts due to it, or done the necessary diligence in this behalf— That Pltff not having made any opposition to the Sale of the Fief Baicuille, qt belonged to Mr De Baicuille a debtor, she ought to pay the debt herself—

That the legacy made by the late Mr Deffy the Pltff husband to Mr De Feligonde, a priest, for the relief of his Conscience was paid by private arrangement between the parties and afterwards repaid to the Pltff, which sum She now carries into her account as if it had been really paid by her out of the Community—

Ross for Durocher, Curator &a—

The sum of 600t paid in paper money as the dot of the Pltff at the time of her marriage, ought to suffer a deduction of 25 ℔ Ct as the paper money at that time was considered as not worth more—

The Pltff after the death of her husband was the only person who could recover the debts due to the Community or do diligence in this behalf— on this account she ought to be charged with the debt of Baicuille of 600t— and three small debts amounts to 3478# 5s qt are mentioned in the brouillard— for the recovery of

which

which the Pltff has no excuse, as some of the persons owing these sums are still alive and able to pay, — and the brouillard is the strongest presumption of a debt —

The sum of 34,000 - the propres fictifs, must be considered as livres Tournois, the papers of record shew it, and it is a certain fact that Tournois was the Currency at the time —

The Pltff husband in his marriage Contract has said that he was possessed of 34,000 in money goods & effects, which was admitted by the Pltff & her relations at the time as being true, & cannot now be controverted by her declaration, that she has received only 30,904. 3. 6 — No Inventory was necessary to ascertain the value or amount of what the parties admitted — and as to the sum of 3095. 3. 6. which the Pltff says ought to be deducted from the above sum of 34,000 as not recovered, it ought not to be allowed her, as independent of the diligence she was bound to do, nothing appears to shew that this sum so to be deducted made part of the 34,000 —

That Interest ought to be allowed on the 34,000*. as it ought to be considered as a real estate, being the propres fictifs of the Pltff husband, & should run from the time of his decease —

As to the sum of 240*. charged by the Pltff. counsel for making out her account — it was ordered to be made by the practiciens and the Pltff counsel cannot be paid by the Defends for the acct he has made out to assist Pltff before those Practiciens —

Beaubien for Levêque & al'-

That if 240$ be allowed to Pltff's counsel for drawing his acct an equal sum ought to be allowed the defendt's counsel, as they had the same right to make out an acct as Pltff, and it was on this acct that the practiciens disallowed it —

That Tournois, was the Currency in this Country at the time of passing the Pltff's marriage Contract.—

That it must be presumed as mentd in the s. Contract that the sum of 34,000. stipulated as propres fictifs, was at the time in the possession of Pltff's late husband — no Inventory in this Cause was necessary, as in the stipulation of paymt of debts.

That as the Interest on the husband's propres, the stipulation of propres in favor of husband or of the wife is the same.—

Stewart in reply —

The amount of the propres fictifs of the Pltff's husband as mentioned in the marriage Contract ought not to be taken agt the Pltff — he gives it as a mere assertion or declaration, qh is no proof, it is like a partnership, in which the declaration of partners as to the property they bring into that partnership must be verified — Had the stipulation been that the above sum of 34,000 was in money only, it could not have been liable to any objection — If the Pltff is to be charged with the whole sum of 34,000, deduction ought to be made of what has not been received — and there is a wide difference between this

1....

sum and the 6000# the Plffs dot, which was a debt of the Community and must be first paid, the 34,000 was to be realised out of the remaining property – Poth Comt. Nº 303 – As to the Tournois Currency, there is no proof, and this Court will not assume the fact –

That as to the Interest – the Plff ought certainly to pay none no demand was ever made upon her for the money which she has always ready to pay – and the propres fictifs cannot be considered as a real Estate, nor can the fiction be extended beyond the case for ql it was made –

That if the marriage contract is to be taken as conclusive agt the Plff for the above sum of 34,000 – it ought also to be a proof for as to another Sum of 10,000, stipulated to be paid to her by her relations at the time of her marriage

The Debts mentioned in the brouillard of the Plffs late husband ought not to be charged to the Plff – the brouillard is no legal proof – here it does not even carry a presumption with it, as it is a book qe existed long before the marriage and the debts therein mentd must be presumed to be paid as no mention is made of them in the Inventory which was made of the Community, which constitutes a legal proof as to the property composing it –

The legacy of 24,000# was pd by consent of the Heirs, under a Judgt of a Court of Justice ——

Thursday 15th. June 1809

Present

All the Judges.

Beek
vs
Blake

The Defendt. moved that he might be heard on his Serment suppletoire on his acct. for medicines & attendances. —

It was objected on the part of the Pltff, that the Defendt had already examined the Pltff on faits & articles, on this point and ought not therefore to be admitted to his Serment suppletoire, as it would be setting off one oath agt. another — besides the acct. now set up by the defendt. is wholly inadmissible as it forms no part of the points in issue, nor is it mentioned in the Defendts answers to the faits & articles submitted to him by the Pltff, & being an entire new demand ought not to be received or proof thereof admitted against the claim of the Pltff. —

The Defendt. answers that the acct. in question comes within the settlement of accts. he has referred to in his answers to the faits & articles & proof thereof ought to be received. —

Robitaille
vs
Leprohon

The Court considering that the Exception pleaded by the defendant was the same as has already been adjudged on in the Case of Robitaille. v. Marchand dismissed the same with Costs. —

Ross. — v. Turgeon — } On trial by Jury for defamatory words spoken of Plff in the execution of his duty as an Advocate — Verdict for Plff £20. damages.

Robitaille v. Marchand } The Defendt moved that Arbitrators should be named to settle the accounts between the parties and as a reason states, that the accounts are some of them upwards of 25 years standing and between brothers, and during all that time no final settlement ever took place — The Plff answers that his demand is liquidated, and that of the Defendt uncertain and unliquidated —

Foucher v. Robitaille } For tithes in wheat &c — rec.d by Defdt to Plffs use — cont.e till to morrow —

Friday 16th June 1809.

Present

All the Judges.

Foucher. v. Robitaille } For tithes recd by Defendt to use of Pltff.—

The Pltff states, that the late Mr Pre Marchand being Curé of the parish of St Francois de Sales, became incapacitated by reason of a paralitic stroke from the exercise of his functions as Curé, in consequence of which, the Bishop appointed one half of the parish to be desservi by the Pltff who was to receive the tithes of that part— That the Defendt under pretence of a power of Attorney from St Marchand took upon himself to receive the tithes from the parishioners as well of this half as of the rest, and still retains the same without rendering any acct thereof to the Pltff, for which he now brings Suit.—

The Defendt says, that the late Mr Pre Marchand was in possession of the Cure of St Francois de Sales by legal title and had a right to receive the tithes— That the Plaintiffs appointment to do part of the duty in the parish and to receive part of the tithes cannot affect the right of the Pltff as he had not been deprived of his office, in asmuchas the Curé is not amovible from his parish at the will of the Bishop. Edits. p. 244. an. 1679. — That the Defendt acting under the power of Attorney of Marchand is not personally answerable to the Pltff for his acts, but his Constituent who appointed him.

The

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The Pltff in reply says. – That he by no means admits that the Defendt was the attorney legally constituted of the late Mr Pre Marchand, but that under pretence of such a power he received and now retains in his possession that part of the tithes which was the right and property of the Pltff – The appointment of the bishop and doing the duty in the parish entitles the Pltff to a proportion of the tithes, and in this respect his action may be compared to a quantum meruit for the services he rendered. –

The Defendt answers – That the Pltff brings his action as if he were the proprietor of one half of the tithes received in the parish, and not for a quantum meruit, – It is a maxim in law that there cannot be two Proprietors of the same thing at the same time, and it is not to be contested that Pre Marchand was the proprietor of all the tithes of the said parish during the time in question, he not having been deprived of his office. –

Cliquancour vs Citoleux. –

Action for rent of a mill –

The Pltff. states, that he has made proof by witness of Defendrs agreement to pay a certain annual rent for the mill with other conditions, and altho' such proof be made respecting matters above 100th yet in this case it is legal. cte. Poth. Obl. No 36. 37. –

The Defr. says, that testimony adduced is illegal, being in proof of matters above 100th – That the mill was repaired by Defr. & Experts ought to be named to ascertain the extent of repairs and rent q.l ought to be paid for the mill. –

35/

Henderson & Co. v. Grant —

Action for damages for the non delivery of potashes —

The defendt. says, that pltffs statement of damages is too high, and the proof in support of it is not sufficiently made out. That Defendt. had a right to a discharge of his contract on delivering a smaller quantity of potashes than that stated by the Pltffs who have estimated their damages by the larger quantity which the Defendt. might, but was not absolutely bound, to deliver —

The Pltff submits the question to the Court, but claims the charges of a protest made on the Defendt. as part of his damages —

Brunet v. Lapran — Exor. —

Action agt. Defendt. for fees due to Pltff for services rendered as a Notary —

The Defts. as Executor of the last will and testament of the late M. Lapierre says, that the Pltff was employed by him to do the services for wh. part. is demanded, but that his demand is extravagant, and submits same to the Court

The widow — says, that the Pltff is deserving of nothing as by his mis-conduct he has injured the estate of the deceased, and dissipated the property — that he purchased sundry articles at the sale of the effects, received monies, and paid part of the monies of the Estate to satisfy his own debts, of which he has rendered no account — and of which he ought to be bound to render an acct to the parties concerned before he be entitled to receive any thing on his present demand —

Saturday 17th June 1809

Present

All the Judges.

Foucher
v
Robitaille –

The Court gave an Interlocutor admitting the parties to make proof of the facts by them respectively alledged. –

Proulx
Patrie
&
Gosselin –

On a Proces verbal, regulating a Cours d'eau – on Evocation –

The Pltff. says, that he consents to the homologation of the Proces verbal before the Court, but that the Costs ~~after the first~~ ~~Proces verbal should~~ be paid by the parties in equal proportions, except Et. Content who ought to be exonorated therefrom –

Ross for the Interessés, says that he agrees to the said homologation provided this clients shall be exonerated from the Costs of the first P. Verbal, which was made at the sole requisition of the other parties, and to the prejudice of the rights of the Interessés

The Pltff replies, that the nomination and visite of the Experts, as well those first as those last named, was to attain an object for the common benefit of all the parties, and ought to be at their joint expence –

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Hibberson.
v.
Coffin.

On action for recovery of damages for a breach of Contract

The Defendt. pleads, that the Contract was made by him and another his partner, and that he cannot therefore be sued alone. That the Contract was made in the State of New York, by the laws of which State the Individual partner cannot be sued for the debts of the partnership, while the others are alive — That the lex loci, where the Contract was made ought to prevail. —

The Plff replies, that by the laws of this Province, Partners are solidaires, and may be sued individually for the partnership debts — cites — Poth. Obl. Nº 265 to 272 inclus. —
1 Dom. p. 215. liv. 3. tit. 3. —
Poth. Societé. Nº 96. —
Natt. atº Desrivieres. decided. 5. Ap. 1809. Nº 3. p. 31. —

The Defendt. in answer says, that the lex loci of the Contract ought to apply, according to which all the partners ought to be put in Suit. —

Burton. —
~~Bristain~~
Rice

The Pltff had sued ~~the Defendt~~ Moses Jenner & Alex. Phelps upon a former action en revendication, to obtain the possession of a certain quantity of wood and timber, part of qt. consisted of 2000 logs a pieus of oak which he alledged to have been cut down upon his, ~~the Pltffs~~ Estate by the ~~defendant~~ Jenner & Phelps — The present action was an action of Trespass for cutting down wood & timber on the same Estate —

Stewart for Defdt —

The present action is for the same wood for which Pltff has already brought his action en revendication, and Pltff cannot have two kinds of action for the same thing. — That there can be but one remedy by action, although there are many means by execution to carry a Judgment into effect — That the Pltff by instituting his action en revendication, admits that ~~the Defts~~ Phelps & Jenner came into the possn of the wood in question without any tortious act — it is like the action of Trover in England, the conclusions only are diffarent — That the Pltff by the action he has already instituted has waved his right to the present or any other action for the same thing — cites. 1. Bur. p. 31. Cooper, &al. vs Chitty & al. —
1. Com. Dig. p. 63. H. 24. —

† ag. Alex. Phelps, whose servant the Defendt was & acted by his orders.

Rolland for Pltff.

The action already instituted is merely for the property, and nothing more can be asked by the action en revendication, nor can you join an action of damages, which may bee considered as the possessoire, with an action for the propesty. The present action claims a separate and distinct object from the former, viz. damages for a trespass,

whereas

whereas the former was for the property of the Pltff which ~~the~~ Phelps
~~Defendt~~ Jenner had in his possession and wrongfully detained — That
the action de revendication cannot be compared to the action of
Trover, because the former concludes for the recovery of the things
detained, the latter sounds only in damages, and if by the
action de Revendication a conclusion could have been made for
damages besides that for the delivery of the timber, there would
have been no occasion for another action and the Defendt exception
would then have been right — but such conclusion in an action
de revendication would be irregular —

Sewell for the Pltff.

Both actions are maintainable, because they are for different
objects — the one for the recovery of timber, the other an action of
trespass, for damages, and whether it be for the same timber or not
is by no means material, as there is no cumulation d'action. — To
entitle the party to his exception of another suit pending for the
same thing — three requisites are necessary — 1. That the two
actions be between the same persons — 2°. That they be for the
same thing & 3°. That it be for the same Cause of action — 1. Pigeau
p. 198. 199. neither of which requisites is to be found in the
two suits now pending — nor is it alleged that the present suit is between
the same persons as that for the revendication. —

Stewart for Defdt. in reply —

The Defendt. in this Cause may be considered as one of the ~~is the same~~ persons ~~as~~ named in the
former action, the only difference is, that in this the Defendant
~~he is named with~~ is prosecuted alone, but it is for the same object as that in ~~others~~

~~others, but the object~~ in question in ~~this is the same as~~ the former action — The transaction is the same, — and it cannot be divided into different parts in order to ground as many suits thereon. — The Pliff might have asked for damages by his action en Revendication, besides his demand for the timber, it is a usual conclusion in that action as well as in the action petitoire to demand damages besides the object immediately in contest —

Indians of Sault St. Louis v. De Lorimier.

The Defendt. obtained a rule on Pltff. to shew Cause why the names of three of the Pltffs should not be withdrawn from the Suit, as they never gave any authority for instituting the same agt the Defendt. — In support of the rule the Defendts counsel produced a power of Attorney from three of the persons named as Plaintiffs in the Declaration stating that they never authorised the action and empowering him to get their names withdrawn from the Suit. —

The Pltff attorney, states, that before bringing the present Suit he received a power of attorney for that purpose in which were included the names of the three persons who now wish to withdraw therefrom, and which power of Attorney is regularly made and signed by the said parties — and therefore they cannot now withdraw from the suit, at least not without payt. of Costs —

The Defendt. says, that the three persons in question never gave their names for the purposes of a Suit agt him, & never understood the power they gave to warrant the bringing a Suit. —

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41)

Jon: Magar
v.
Henderson

Action for the value of a certain quantity of Staves sold by one Benjn. Magar to the Defendt. & assignment of right therein to Pltff.

Pltff. states, that Sale and delivery are sufficiently proved and thereon prays Judgt.—

Defendt.— admits having received the Staves from Benjamin Magar, whom he considered as the attorney of the Pltff, and that the Staves were the property of the Pltff. and in consequence gave Pliff credit for £70. 8.. the value of 2357 of s.d Staves in his acct. with Defendt. which acct. was delivered to Pltff in June last and is ~~now~~ filed in a certain other Suit instituted by Pltff a.t Defendt. now pending in this Court— That having already got credit for the value of the said Staves in other transactions between the parties the Pliff cannot under an assignment from his brother obtain — payment a second time for the same Staves— That Benjamin admits having seen in the beginning of June last the account which had been so rendered by Defendt. to the Pliff, & afterwards on the 24th. of the same month makes a pretended assignment of the Staves to the Pliff wt. a view to defeat Defendt— As to the — remainder of Staves, being of value of £6. 11. 6, Defdt. was always ready to pay same, for ye. demand ought to have been made in the Inf. Court.

Pliff— in reply says,— Defendt. admits having rec.d the Staves from B. Magar, who had a right to demand the payt. of them— The credit given by Defendt. in his acct. wt. Pliff is wrong as nothing was due to him by Pliff, nor is there any proof of the acct. made before the Court— The Pliff has a right to the highest value of Staves at time of delivery & more is due than balance offered by Defdt.

42)

Robitaille
vs
Marchand
& wife.

Action on Defendts acknowledgment made in writing for the paymt of 14,000 #

The Plff states, that he has made proof of the Defendants signature by their admissions under the Faits & articles and thereon prays Judt

The Defend. says, that he has admitted his signature to the Note or acknowledgment in his answers to the faits & articles but adds that he signed the Note upon the late Mr. Marchand's promise that he should never be called upon for the payment of it, & that therefore his admission ought not to be divided.— As to the wife of Defendt, although she appears to have signed the acknowledgment in question with her husband yet she cannot be condemned jointly with him in this action because nothing appears to shew that she was authorised by her said husband to bind herself by signing the said act— No presumptive authority is sufficient, it must be express, and although the signing of the act in the presence of her husband may imply such authority, yet that or any thing short of an express authy is insufficient— The faits & articles submitted to the wife, (which have been taken as confessed by reason of her default) tend to shew, that she was authorised by her husband to sign— but if the wife had appeared and declared by her answers that she was authorised by her husband to sign the said acknowledgment, such declaration would not supply the want of an express authority from the husband, which

must

must appear to be his act and not hers, nothing therefore can be presumed agt the wife by her default in answering to the faits & articles. cites. Pothier. Traité de la puiss.ce du Mari. &c. Nº 68. Nº 69. & 74.

The Pltff. replies - That the Defend.ts admission of his signature to the acknowledgment is sufficient to entitle Pltff to his Judgment as Defend.t cannot be received to allege facts in his own favor by his answers or derive any benefit therefrom without making proof of same - As to the wife of Defend.t there is a sufficient proof to warrant a Judgment agt her as well as agt her husband by her signing the act in the presence & with the Consent of her husband - the authorities cited by Defend.t apply only in those cases where the wife wishes to bind herself alone without the husband, but are not applicable to the Cases where the husband and wife join in the same act and become equally bound. —

Rollin. - vs Bouthillier

On action for the recovery of a balance due on Obligation The Defend.t set up an Incidental demand, to which an exception was made by the Pltff, & the parties now heard thereon. -

Bedard for Dfd.t states - That by the Obligation in question the Pltff agreed to take in part pay.t thereof a certain piece of land or farm, which was estimated by the parties at 6000.tt

that

that the Pltff refused to take the land at this stipulated price but procured from Defendt a deed thereof by Sale together with a certain number of Cattle for 3500ft, which sum of 3500 hath been credited to the defendt upon the Obligation instead of the 6000ft independent of the Cattle which might be worth 1000ft — That therefore as to the sale of this land there was a lesion d'outre moitié de juste prix, which the Defendt has set up by Incidental demand agt the Pltff, & claimed that the said Sale be rescinded and the sum of 6000ft credited to him besides the value of the Cattle — That as this lesion d'outre moitié, arises from the act of the Pltff and under a stipulation contained in the same Obligation on which the present action is founded, the Defendt is entitled to allege the said lesion as a plea to the action, and consequently may set it up by way of Incidental demand. —

Viger for Pltff — excepts to the said Incidental demand as inadmissible and irregular, and says, that there can be no compensation pleaded of an action en rescision, it being contrary to all the principles upon which compensation is founded. cits. Poth. traité. Oblis. N° 626 &c — That the conclusions taken by the defendt in his Incidental demand are not such as ought to be taken in an action de rescision. —

45)

Lawrence & Dayton
vs.
A. Duvillier
&
Ross & al. Oppts.

On opposition for House rent.—

The Opposants having claimed security for the payt. of one years rent, or that the effects seized should remain as the gage & security for the same — the Pltff moved that the Opposition of the Opposants should be converted into an Opposition a fin de conserver, and that the effects seized may be ordered to be sold —

The Opposants say, that their privilege attaches only on the furniture in the house and not on the proceeds, and — that furniture cannot be removed without the consent of the landlord, or upon giving him security for his rent — That the Opposants cannot be bound to convert their Opposition into one a fin de conserver in order to take a dividend with the — other creditors, as it would be compelling them to give up a greater for a lesser right —

The Pltffs reply, that he consents that Oppos^ts shall be entitled to all their privileges under an opposition a fin de conserver as on the present — That it would be extremely hard on Creditors particularly in a bankrupt Estate like the present if the whole of the Defend^ts effects should be tied up for the security of — house rent, when they were more than sufficient to pay that rent — That Defend^ts lease with the Opposants is from year to year, & there can no inconvenience arise to the Opposants by selling the effects, subject to the privileges they claim. —

46)

Lasaussaye widow Hazen vs Burton —

Action for the recovery of Dower on an Estate in the possession of the Defend.t —

Hearing on the merits. —

Sewell for Defs.t —

The Pltff is not entitled to her action agt the Defend.t because

1st. There is no proof her marriage with General Hazen, as alledged

The extract taken from the register of Marriages &c. filed in the Cause is insufficient, the register not being an authentic copy as required by law — The affidavit of Dr. Mountain cannot supply the place of it, and the Certificate & extract by him filed ought to be with drawn, as such extract could have been obtained before the Suit was commenced — No witnesses appear to have signed the Register —

2. The death of General Hazen is not proved —

No extract is filed from any parish register to prove Gen.l Hazen's death, nor any proof made that no register of Burials existed at the place where he dies — the only proof made is by two witnesses who say that they were present when a person named Gen.l Hazen, was buried — but nothing is shewn to prove that he was the husband of the Pltff —

3. That ~~General Hazen~~ Hazen, was a Traitor — having left his Country and joined the rebel armies of the americans in which he had a Command as General, by which means all his estates became forfeited to the Crown & the right of Dower destroyed —

4. That the Pltff herself left the Province with General

Hazen

Hazen in 1775, and has since that time, and still is resident in a foreign State, whereby the right of dower, if any ever existed, fell to the next of Kin of Genl Hazen, to the exclusion of the Plff. — cites. Pothier. Douaire, p. 308. small, edit. Remisson. Douaire ch. 12. Nº 33. & 34. —

Poth. Comte Nº 145. & Nº 148
Id. Société. Nº 179. 180. —
Id. Douaire. Nº 93. 94 — also Nº 26. & 32. —
Id. Vente. Nº 643. —

5. That the Seigniory of Blemy & Sabrevois upon which Dower is now claimed being held by indivis between General Hazen & General Christie, no right of Dower could attach thereon unless there had been a partition of the Estate so as ascertain the share of Genl Hazen therein, but Genl Christie having purchased the rights of General Hazen in that Estate, before any division thereof was had, Dower therefore cannot be demanded thereon. —

6. That General Christie, now represented by the Deffendr was a Creditor of General Hazen prior to the date Plffs marriage with him, in a large sum of money under a Bond in the english form and a Judgment thereon; which operated a mortgage on all the property of said Hazen, & thereby gave a preferable claim to Genl Christie on the property now in question to that of the Plff. — cites. Poth. Douaire Nº 91.

Rolland of Counsel for Deffr,

The entry in the Register, of the Plffs marriage may be true, but it is not regularly made & therefore not a sufficient proof of the fact it mentions. —

The Plff has filed a Renounciation to the Community between her and her late husband, but such Renounciation can be of no value, as it was made without any previous Inventory of that Community having been made by her, which was

requisite

requisite – cites. Poth. Cont.te N.o 565. – 2. Argou. p. 340 – 120 ea –

The Estate in question was purchased by General Christie and General Hazen jointly and they held it by indivis, their rights therein were never ascertained until the Decret, which adjudged the whole to General Christie – It is like a licitation among Co-heirs, the purchaser acquires the property clear of every incumbrance of the other heirs, because they had no separate certain right in the thing which they could bind by their act –

That the Debt due by Gen.l Hazen to Gen.l Christie was prior to the Pltf's marriage, and carried a mortgage on all Gen.l Hazen's property – it was a bond, duly enregistered in the office of the Secretary of the Province, & recognized by Judgment of a Court of Law, which gave all the necessary authenticity required for raising a Mortgage. –

Renusson Douaire – ch. 10. N.o 4. –
Journal du Palais part. 6. p. 271. –
Id. tom. 1. p. 953 arrêt. 1. Sept.e 1678. –
Lebrun des Successions liv. 2. ch. 5. dist. 1. N.o 33.
Basnage. ch. 15. N.o 73. –

That Gen.l Hazen could not be considered as having any property in the Estate in question at the time of his marriage with the Pltff as by the said Bond, he mortgaged the same to Gen.l Christie, which mortgage was an absolute Sale à faculté de reméré, which he never exercised, before the Decret in question. –

Stewart for Pltff.

The Plaintiff has made sufficient proof of all the facts alledged by her to entitle her to her Judg.t

1.st As to her marriage, the extract from the Parish Register, given by D.r Mountain is authentic under all the requirements of the Law and although the extract first filed was not authentic, yet under the rules of practice it may be taken away and an authentic copy fyled at the time of making up the proofs in the Cause, which has been done. –

2.

2. As to General Hazen's death, it has been sufficiently proved nothing further is requisite than an acte de notoriété to this purpose, which under the French law is a sufficient proof, coming from a foreign Country —

3. By the French law the most Civile does not bar Dower, and therefore if Gen: Hazen had been convicted of Treason it could not have affected the right of the Pltff — And in England Treason is no bar to Dower without attainder. cites. 2. Bac. Ab. p. ~~641~~ 121. — 3. Com. Dig. p. 542. — But by the Treaty of Peace of 1783 between Great Britain & America, all the Civil rights of the subjects of Great Britain are ensured to them. —

4. As to the pltff: residence out of the province, it hath not been pleaded by the Defendt and can form no ground of defence by verbal argument to the action, —

5. It is true the property in question was held in indivis between General Christie and General Hazen, but the right of Gen: Hazen in that property has been ascertained in such manner as to entitle the Pltff to her Dower thereon — A great distinction is to be made between an acte de partage, a licitation, & deed of Sale, and the Decret; the three first are the voluntary act of the partys, the other is the acte of Justice & done without the consent of the partys — the decret not only ascertains the extent of the right but gives it to another party in satisfaction of a Debt — Here the individual right of Hazen in the Estate in question was ascertained to be one half thereof, and as such was adjudged to Christie in satisfaction of his Debt — Christie therefore did not hold this half as a Co-heritier, a copartageant or as vendee would have done, but as a Stranger, and a Creditor under a deed by adjudication. —

6. As to General Christie's debt being prior to the Pltffs marriage it is of no avail, the English Bond gave no mortgage on the property under the laws of the Country, it was a mere sous seing privé act, which could only ascertain a debt but no more - Christie never did any act under this English Bond, as to taking possession of the property, he only obtained a Judgment for ascertaining his debt, but this Judgment was subsequent to the Pltff. marriage -

As to the enregistration of the Bond, that could give it no more authenticity than it had before, such enregistration being only the preservation of the Bond - but could not raise a mortgage

As to the legality of the Plaintiffs renounciation nothing has been pleaded by the Defendant,

Monday 19th June 1809

Burton vs Bristain & al' -

The Court were of opinion that the Pltff could not maintain an action de revendication and an action of damages for the same timber - that having made his choice of one kind of action he could not prosecute the other - and therefore admitted Defendts in the several Causes to make proof that it was the same wood of which was in question in both actions -

See. Denisart. vo Concours d'action.
Jer. Dic. Droit. vo Crecancier -
Nouv. Denisart. vo action. § 5. No 3. -
1 Pigeau. Proc. Cw. p. 36. & 37. -

Monday 19th June 1809.

Present

All the Judges.

The Indians of Sault St. Louis vs De Lorimier.

The Court were of opinion that the Rule obtained by the Defendt should be discharged, as the mode of proceeding ought to be a desaveu in the name of the persons who do not acquiesce in the prosecution of the suit. —

Clignancour vs Citoleux. —

Referred to Experts to ascertain the claim of Pltff for rent of the mill during the defendants possession thereof, also the defendants account agt the Pltff for necessary work and repairs done to the mill, and articles furnished to said mill, and to state the balance between them. —

Rollin vs Bouthillier

The Court dismissed the exception to the Incidental demand, considering it as rising out of the transaction between the parties — The parties admitted to make proof on Incid. demand. —

Lacroix vs Limoges & Heirs Jordan Intervening — also Lacroix as Incid. Pltff vs Heirs Jordan

Cause argued the 15th October last. and afterwards on the 8th april last on the proofs adduced under the Interlos order.

The Court this day gave the following Judgt. —

The

The Court having heard the parties by their Counsel, as well upon the demand in Chief as upon the Intervention of James Jordan, and the pleadings thereon, examined the proceedings and proofs of record, it is ordered and adjudged that the Defendt. do quit, abandon, and deliver up to the Pltff, the two lots of ground mentioned in the declaration of the said Pltff. that is to say, a lot of ground situate lying and being in the Village of Terrebonne containing 90. feet in front by 75 feet in depth, bounded in front by St. François Street, and in the rear by the lands of Messire Proulx on the South west side by the lot of Jerome Roussille, and on the N. E. side by the lot hereinafter mentioned with the houses and buildings thereon erected — Also a certain other lot of ground containing 24 feet in front upon the said St. Francois Street, and forty feet in front on the side next the hangard of the late Jacob Jordan Esq. by 75 feet in depth, bounded on one side by ungranted lands, and on the other side by the lot hereinbefore described; which said lots of ground the Court hereby declare to be the property of the said Pltff, inasmuchas the said late Jacob Jordan did not in his lifetime sell or alienate the said lots of ground under the power of Atty. given to him by the said Pltff bearing date the 6th. Oct. 1790, and therefore the heirs of the said late Jacob Jordan could not legally sell or convey the said premises to the said Defendt — And it is further ordered and adjudged that before the said Defendt. shall be held or bound to comply with the present Judgment, the St. Pltff shall pay & reimburse to him the St. Defendt. as representing the heirs of the said late Jacob Jordan the sum of 3600th. being the amount of the purchase money stipulated to be paid by the said Pltff to the said late Jacob

Jordan

Jordan for the purchase of the said lots of ground as mentioned in the deed of Sale of the 1st Sept. 1787; with interest at five p Centum on that sum, that is to say, on 2700# from that day, and on 900# from 1st Sept. 1787 until 1st Sept. 1791, at which time the said Jacob Jordan took possession of the said lots of ground and houses thereon erected, making in all 4725# equal to £196.17.6 Current money of the province — the Court compensating the rents and profits which may have been received by the said late Jacob Jordan from the said lots of ground from and after the time he took possession thereof with the interest on the money due by the Plaintiff on the purchase of the said lots of ground — And it is further ordered and adjudged, that the said Pltff do in like manner pay and reimburse to the said Defendt. for the improvements & repairs by him made on the buildings erected on the said lots of ground during his possession thereof the sum of 2250# equal to £98.15. Current money aforesaid, saving to the said Defendt such recourse agt the heirs of the said late Jacob Jordan as by law he may be entitled in consequence of the present Judgment; saving also to the said heirs their recourse agt the said Pltff for the sum of £25.— for the necessary repairs made to the said houses and buildings by the said late Jacob Jordan during his said possession of the same, and for the payment whereof the said premises are hereby declared to be bound — each party to pay their own Costs. —

Holland, Exer of Dumont v Parry —

№ 55 — This Cause was heard on 17th Febr. last — The Court this day gave the following Judgt —

Sa

54)

La Cour apres avoir entendu les parties par leurs avocats, examiné la procedure et preuve, et en avoir delibere, considerant que le billet ou reconnoissance donnée par le Defendr au feu Lambert Dumont Ecr en date du 21 Novbre 1805, et produit par ledit Defendr doit etre regardé comme une quittance et decharge valable des lods & ventes dus sur la terre en question jusqu'au dit jour, considerant aussi que suivant la preuve qui a ete faite le nommé Jean Bte Clement doit etre decharge des lods et ventes sur son acquisition en conformité au testament du dit feu Lambert Dumont; et que sur la retrocession de la dite terre faite par ledit Jean Bte Clement au dit Defendeur ne sont dus aucuns Lods & ventes, de maniere qu'il ne seroit du au dit Demandr sur sa demande actuelle qu'une somme de neuf chelins deux pence pour une année de cens & rentes sur ladite terre, echuë le onze Novembre 1806, laquelle somme de 9/2 la Cour condamne le Defendr a payer au dit Demandr, et aussi d'exhiber au dit Demandr les titres de l'acquisition faite par lui Defendr de ladte terre avec tous les autres titres concernants la propriété d'icelle etant en sa possession, et de payer au dit Demandr un ecu et quart d'ecu parisis d'amende faute par lui d'avoir exhibé ses dits titres. Condamne le Defendr à payer les frais comme dans une Cause au-dessous de £10 Stg, le surplus des frais tant en demandant qu'en defendant la presente action à être supportés par le Demandr

Robitaille. v. Marchand & wife.

The Court gave Judgt agt the Defendt Marchand, but dismissed the action as to his wife, being of opinion, that her signature alone, wt out stating, that it was made by the authority of her husband, did not bind her.—

Gillespie &c.
v
Auedjo & al.
&
Brehaut. Oppt.

The Court were of opinion that Brehaut the Opposant had not made sufficient proof of the mortgages he alledged to be due on the property sold him by Dumiere, & therefore ordered the remainder of the monies in the hands of the Sheriff to be paid to the Pltff on account of their Judgmt.

—. Tuesday 20th June 1809. —

Rolland Exr
v
Foretier
&
Jos. Labelle. Gar
&
J. Bte Labelle cr. Gt.

The Court were of opinion, that the Tutor Labelle by buying in the land of his minor by becoming the adjudicataire at the Church door, did not thereby become the proprietor thereof, & that no lods & ventes were due upon that adjudication — The Court therefore gave Judgt in favor of the Pltff for the lods & ventes on the defendants purchase from the Sr Labelle, amounting to £8. 11. 8 —

Brunel, Notts
v
Fagnan, Exer
&
Robin, mise en Cause

As it appeared that the Cliff had purchased sundry articles at the sale of the property of the late Franc Lapierre, & also that he had recovered monies due to his Succession, the Court ordered Pltff to render an account of such property, monies or effects which may have so come to his hands, before proceeding to adjudge upon his present demand. —

Robitaille
v
Marchand

The Court were of opinion under the circumstances of the Case that Arbitrators ought to be named to settle the accounts between the parties. —

Shorts. — vs Carter. —

The Pltff moved that certain faits & articles which had been served on the Defendt. should be taken pro confessis, and Judgt. entered thereupon agt Defendt —

The Court considering that the defendt. had made default, and that no personal service had been made of the faits & articles were of opinion, under the rules of practice, that the Pltff should take nothing by his motion. —

Laurence Dayton vs Austin Cuvillier & Ross & al! Opposts

The Court ordered the goods & effects seized to be sold, reserving to the Opposants their right of privilege upon the proceeds

Hoyle Henderson & Co vs P. Grant. —

The Court assessed the damages by the lesser quantity of Potash which the Defendt. was bound to deliver to the Pltffs.

October Term 1809.

Monday 2. October

Present

All the Judges.

There was no business before the Court except the ordinary motions.—

Tuesday 3. Oct. 1809

Sarault. v. Marmier & Noel, & al' Garants —

The Pltff moved for a delay for an enquête by witnesses to prove the nature of building erected by Defend. and the encroachment on Pltff wall.—

The Defendt objects to the motion, & says that it is a subject fit to be submitted to the examination and report of Experts, to ascertain the state of the wall pretended to be mitoyen by the Pltff, and the injury complained of. cite,

1. Pigeau Proc. Cw. p. 291.—

The Pltff objects to Experts, as the facts can be ascertained by the testimony of witnesses.—

58)

Jn° Everton. v. R. Lewis — On promissory Note from Defend. to Pltff.

The Pltff prays for Judg. on the proofs made by him —

The Defendt. says, that Pltff has not made proof of his signature to the note — Further that there is no proof of the execution of the power of Attorney from the Pltff, under which the action was instituted — to this insufficiency of that power he is entitled to object at the hearing of the Cause under the Rules of practice —

The Pltff contends that proof of Defend^s signature is sufficient — and that no proof was necessary to be made of the execution of the power of Att^s, as the action is not founded upon this power of Attorney nor does it make any mention of it, and therefore a particular objection was requisite if the Defend^t wished to avail himself of any insufficiency in the power of Att^s —

—

Reynolds v Pell — action for goods sold & deliv^d —

Pltff prays Judg^t. on proofs adduced by him —

Defendt. says, that pltff agreed to take lands in payment of the goods, which agreement he has proved — that therefore Pltff^s action ought not to be for money, but

for

for the lands according to agreement, as in case only of a refusal on part of Defend^t is Pltff entitled to ask for money — That Defend^t was always ready to make a conveyance to Pltff of lands to amount of goods, now offers same —

Pltff — denies agreement to take land in payment and if such agreement existed, Defend^t should have made an offer to convey the land to Pltff before the action, wh^h he never did —

Bonnier v Perses } On Desaveu

The Pltff Bonnier being an old infirm woman and unable to attend to her affairs, presented a petition to the Judges in vacation praying, that on this account one should be appointed as her Conseil to assist her in the management of her affairs, whereupon the Judge granted her request and appointed the s^d her conseil.

In consequence of this appointment the s^d instructed D. Vigé, the Att^y. to institute the present suit ag^t the Defend^t for the recovery of certain articles of rente viagere, due to her by the Defend^t on a certain deed of Donation — The Defend^t by some means obtained from the Pltff her desaveu of the action, or of having given any instructions to M^r Vigé to prosecute it, and

Whereupon

thereupon now moved that the S^d Desaveu might be received and the action dismissed. —

The question now was whether the S^d as Conseil had a right, without the participation or consent of the Pl^ff to institut Counsel to prosecute this action for the recovery of what was due to her —

Defend^t authorities

Now. Denz^t. V^o Conseil nommé par Justice.

§. 2. Conseil aux Majeurs interdits p. 254. N^o 2. & 14. 15.

2. Pigeau. Pro. Cv. p. 93. —

Rep. de Jurisp^ce v^o Interdiction §2 Des formalités §. 4. —

The Defend^t objected, that the Conseil could do nothing in his own name, that the person to whom he was appointed still had the administration of her proper and right to act respecting the same as she thought except in case of alienation or mortgage, and that the institution of the present action without the consent and participation of Bonnier, is wholly irregular and the desaveu ought to be received & the cause dismissed

Pl^ff in reply says, that it appears by the Petition of Bonnier, and the appointment of the Judge thereon, that was more than a Conseil, and that he was really a Curator, and as such had a right to institute this action for the recovery of what was necessary for the support of the Pl^ff. — As to the desaveu, if admissible in point of law, yet it ought not to be rec^d in point of fact, as it was obtained from the Pl^ff by surprise. —

Wednesday. 4th Octr. 1809.—

Present

All the Judges.—

Bonnier vr Serres.—

The Court were of opinion that the appointment of ..... as Conseil to Bonnier, did not authorise him to institute this action without the participation and consent of Bonnier, agt. which she was entitled to make the present desaveu — but as it had been alledged that the desaveu had been obtained by undue means and surprise, a day was given to the Counsel for the Pltff to prove it.—

Baroness of Longueuil vr Charland

Cause argued 17th april. 1809.—

action for the recovery of lods & ventes on a land in the possession of the Defendt.—

The parties having adduced their proofs under the Interlocs of the 9th June —— last, the Cause was now heard on the merits.—

Mr Sol. Genl. for Pltff. states, that the only question now before the Court, is on the Donation from Auclair to Patenaude of 16th Augt. 1804, and on the resiliation of that Donation 11 Sept. 1805, upon both which acts the Pltff. claims her lods & ventes — 1st on the Donation, because it was carried into effect by the possession which Patenaude had of the land, it appearing by the testimony adduced that he sowed the land reaped the crop, & made

Jones

fences and ditches on it – and 2. on the resiliation, because it is the voluntary act of the party – cites –

1. Argou. p. ~~155 – 156 – 157~~ p. 170. 171. –
3. Guyot traité de Fiefs. p. 559. –
5. Freminville. p. 782 – 783. –
10. Repertoire p. 708 – & seq. –

Ross for Defendt.

The Defendt has paid all he owes personally on his own purchase, and files Mr Busby's receipt, the Plffs agent for 200#. q.l is all he owed – it is said in the receipt. (see Exh. No 3), that it is "à compte", but this cannot alter the quantum of the debt q.l the Defendt owed – as to the lods & ventes q.l may be due on the land prior to his acquisition, he prays his recourse over agt his garant

Lacroix for Allaire. the Garant –

There is no proof that Patenaude had possession of the land under the Donation ~~from~~ to him, on the contrary he, Allaire always, remained in possession of all the houses & buildings thereon, and therefore as that act had not its entire effect by a tradition of the lands, no lods & ventes are due thereon – As to the Retrocession by Patenaude to Garant it being made from the Donee's inability to pay the consideration of the Deed of Donation, it is the same as if made in a Court of Justice, in q.l case there

are

are no lods & ventes due — Cites —

Prudhomme. lv. 3. ch. 7b. p. 349. 351. 352 - & 356. — also. 350

2 Argou. p. 170 - & 171. —

That the Pltff has made no proof of the value of the articles of rente & pension stipulated to be paid by Patenaude to allaire, & therefore the Court cannot give any Judgment thereon. —

Brunet — vs — Fagnan & Robin, mise en Cause —

The Mise en Cause having obtained a rule on the Pltff to shew Cause, why the papers filed by him as the account required by the Interlocutor of the 20th. June last, should not be taken off the files as insufficient, and the said Pltff held by contrainte par corps to render an acct. agreeable to s^d Interlo^y

Bedard for the mise en Cause, stated the insufficiency of the acct rendered, which consisted of merely an account of the articles purchased by the Pltff at the Sale of the effects of the late Fr. Lapierre, and a discharge from the Defend^t as Exer for all the monies the Pltff may have received from s^d Succession, in consideration of services rendered to him Defend^t, in the business of the Succession, but without stating what those services were — That this receipt and discharge is not the account which is required by

the

Interlocutor, nor can such discharge exonerate the Pltff from rendering such account to the mise en Cause who is more interested in the Estate than the Defend^t_ concludes that Pltff be condemned to render a sufficient account of the monies he may have received belonging to the said Estate or in default thereof, that a contrainte par corps be granted agt him._

The Defend^t states, that the discharge produced and filed by the Pltff, ought not to be admitted in lieu of the account demanded, as the same was obtained by fraudulent means and the false representations of the said Pltff_

The Pltff_ says, that he has fully complied with the Interlocutor_ that the account required of him could only be meant to ascertain the balance which might be due to him after crediting the said monies to the Estate_ that he cannot be considered in this Cause as a Comptable, nor are there any conclusions nor any demand agt him as Such, and had he even refused to render any account whatever, no Contrainte par corps could have been granted agt him_ That the discharge which he has filed he duly obtained from the Defend^t who was Executor

of

of the late Mr Lapierre and had authority to grant such discharge, which therefore precludes the necessity of rendering any account of the objects stated in the Interlocutor —

Logan & Watt
v
Radford —

action for goods sold &c
Pltffs prays Judgt. on proofs adduced by them —

Defendt. says, that Pltffs action is wrong, they have sued him for £75 — whereas by the account they file it appears he has paid them more than £500 — That Pltffs never sold goods to Defendt. but only imported goods for him, and their action ought to have been for monies expended as the mandataires of the Defendt —

Rolland Exor
v
Larry
&
Bourgy
&
Delorgs. Garts —

Cause argued on the 15th February last
This day the Court gave the following Judgmt —

La Cour apres avoir entendu les parties par leurs avocats tant sur la demande principale que sur l'Intervention & garantie, examiné la procedure & preuve et en avoir delibéré, condamne le defendr à payer au Demandr en sa dite qualité la somme de £11. 17. 1 cours actuel pour les lods & ventes dûs sur son acquisition suivant le contrat d'Echange du 17 Mars 1807 de la terre mentionnée

mentionnés en la declaration; Et comme il etoit dû sur la dite terre lors de ladite acquisition une somme de £28. 15. 7½ même cours pour les lods & ventes sur l'echange entre Antoine Larocque et Françoise Laurin son epouse et Jean Bte Deloges et Josette Meilleur son epouse par acte du 11 Mars 1802, condamne en outre ledit defendr, comme detenteur de la dite terre, a payer au dit demandr la susdite somme de £28. 15. 7½, si mieux n'aime ledit defendr de quitter et abandonner ladite terre pour être vendue suivant la loi pour le paiement d'icelle — Et quant aux lods & ventes reclamés sur l'echange de ladite terre entre lesdits Jean Bte Deloges & sa dite epouse et Jean Bte Bougy et Angelique Labelle son epouse, suivant l'acte du 12 Octre 1803, la Cour declare que rien n'en est dû au dit demandr, ledit Jean Bte Bougy ayant fait preuve de sa pauvreté de maniere a être dechargé du paiement des dits lods & ventes, comme aussi de la somme de £2. 6. 9½ pour les quatre années de Cens & rentes demandés par ladite declaration, et echûs en Son tems, au desir du testament de feu Louis Eustache Lambert-Dumont Ecuier; le defendeur condamné aux depens — Et faisant droit sur l'Intervention et garantie des dits Jean Bte Bougy et Jean Bte Desloges, la Cour les condamne de payer & rembourser au dit Defendr la susdite somme de £28. 15. 7½ avec les frais comme dans une Cause au-dessous de £30 Stg — & condamne ledit Jean Bte Deloges de payer & rembourser au dit Jean

Bte

Bte Bougy la susdite somme de £28. 15. 7½ et frais, ou telle partie d'icelle qui sera par ledit Jean Bte Bougy payé au dit Defendr en vertu du present Jugement —

Dumont vs Rochon et al

The Court were of opinion that as the lot of ground demanded by the Pltff's declaration, had been given by the late Mr Dumont with a greater quantity of land for the purpose of erecting a church a presbytere & for a burying ground in the parish of St Eustache, the Pltff could demand a part of the said lot of ground nor multiply actions in this respect and therefore dismissed the Suit with Costs. —

Leclaire dit vs Desbiens

It appearing that the other Children of the late Desbiens, brothers & sisters of the Defendant may claim a right in the land in question, the Court ordered that Defend. should make them parties to the Suit, but in the mean time that he should continue to pay the pension due to the Pltff. wife. —

Thursday 5th Oct. 1809

Ch. Just. absent.

Bonnier v. Ferres. — Mr. Vigé, the attorney prosecuting the suit, having declared that he had no proof to make under the Interlocutor of yesterday, but acquiesced in the desaveu made by the Plaintiff — The Court thereupon dismissed the suit, and condemned Mr Vigé to pay costs from the time the desaveu was signified to him, saving his recourse against the person or persons who may have employed him. —

Johnson v Randall — Action by Pltff as Indorsee agt. Defendt. as Drawer.

Pltff prays Judgt. on proofs adduced by him. —

The Defendt objects to the negotiability of a bon, and says, that Indorsee can have no action thereon. —

The Pltff. states, that what Defendt. calls a bon, is a promissory Note, it contains the name of the payee, is stated to be payable to order & for value rec'd. which are all the essentials of a negotiable note, the only difference, is, that instead of saying, "I promise to pay," as is usual in notes, it is merely said, "Good to W. Hamilton or order" — which in substance is the same thing. —

Friday 6th Octr 1809.—

Ch. Just. absent.—

Hagar
v
Henderson

The defendant having obtained a Com. Rogatoire for the examination of witnesses in England returnable this day, he now moved that the return of the s. Commission should be prolonged to the 20th inst. — as by a letter to the Defendt now at Quebec, from his correspondent in England, it appears that the said Commission had been put on board of the Ship which sailed from England in July, but of wh no account has been since heard, in support of which allegation he now filed an affidavit of Th. Gibb, the Defendts partner, stating that he the s. Gibb had been informed of the above facts in a letter from the said defendant by last post; that if in the mean time nothing could be heard of the said ship, he would then apply for a new Com. Rogatoire, as the loss of that already sued out could not be imputed to any neglect of the Defendant.—

The Plaintiff objected that the Defendt had not taken the necessary precautions to ensure the safe arrival of the Commission Rogatoire by procuring a duplicate thereof to be sent by some other conveyance than the ship in question.— That the letter from the Defendants Correspondents in England ought to be filed with Gibbs affidavit, as the defendants bare allegation that he had received such a letter was too light to merit any consideration, the Plff has a right to say, that no such letter

was

was ever received by the defendant – and further it is not alledged that the Com. Rog. has ever been executed. –

The Defendt. in reply says, that he has made the best proof the nature of the Case will admit of – as Defendt. resides in Quebec whose affidavit could not be obtained here, & not being apprised of the necessity thereof writes to Mr Gibb, that he had received such a letter – if Gibb's affidavit shall be thought insufficient he prays for time to obtain the defendants affidavit & the letter he received. That Defendt. was not bound under the rules of practice to sue out a duplicate of the Com. Rog. and nothing would have been allowed for it had it been done –

The Pltff observed that if the Court saw that the Defendt. had not done diligence upon his Commission Rog. the motion he now makes ought to be dismissed, with leave for him to apply for another Com. Rog. if entitled to it by law –

Delagorgendiere vs Duffy vs Levêque & al'

On report of Experts respecting the divisibility of the lands –

The Pltff prayed for the confirmation of the report –

Mr. Durocher, Curator, to one of the heirs, objects, that he was not notified to attend the visite of the Experts – that the Experts were not sworn – and that one of them was appointed by the Judge before the expiration of the time given for that appointment by the Defts.

The Pltff. replies, that Durocher has no interest in the question – he has made no plea – but a nil dicit, viz. that he submits to the Court – the heirs only are interested, who were duly notified, & now make no objection

Mallard
vs
Roi. — —

On action for a specific performance — by granting of a deed of Conveyance by Defend. to Pltff of a certain lot of ground, under an agreement concluded between the parties —

Ross for the Pltff.

The question which now comes before the Court is, whether there be a sufficient commencement de preuve par ecrit now filed in the Cause, so as to let in a proof by verbal testimony of the Sale made by the Defendant to the Pltff —

The points which the Pltff now adduces as forming a commencement de preuve par ecrit are —

1st — a description of the lot of land in question with its limits and extent, with the price claimed by the Defend contained on a paper written partly by Defend — and signed by him — Exhib. No 1. of Pltff —

2. The manner in which the purchase money was to be paid — in handwriting of Mr Durocher, whom Defend authorised to make the Sale — Exhib. No 2. —

3. The Defendt giving up his own deed of purchase duly quittancé & ensaisiné, to the Pltff, in consequence of the Sale — Exhib. No 3. —

4. The Defendants answer to the protest made by the Pltff, as contained in the copy of the protest which the Pltff has filed, exhib. No 4

5. A copy of the same protest filed by the defendant which must be taken as a proof agt the party producing

producing it - by this he admits what is therein stated to be true - and no person can be allowed to come agt their own act Poth: Ob. Nº 774 - It is also to be observed that in the defendants objections or moyens de faux alledged agt. this protest, it is not said that his answer as therein contained is false, or incorrectly taken down. -

6. One of the defendants witnesses on the inscription de faux. (Roi) proves, that the defendants answer was truly made and taken down by the Notary. -

7. Another of defendants witnesses. (Mr. Vigé) proves the defendt. to have said, that he supposed all the money was there, meaning the sum of £618 then offered -

8. That the Notary after taking down the defendants answer read it to him - see testimy of Desbrantel, another of Defendants witnesses -

9. That defendant went next day to the Office of the Notary in order to execute the deed in question for the said sum of £618, when on some frivolous pretext he refused to do it, after the act had been commenced under this instructions — see act filed, Exhib. Nº 5. -

It is said that the "demi-aveu & contradictions resultant "d'un interrogatoire ou de la defense même d'une partie "fait aussi un commencement de preuve par ecrit - see- "1. Pigeau. p. 266. 7- but here there is more than the demi-aveu the defendant's answer to the protest, proved by his own

witnesses

witnesses, contains a full acknowledgment of the sale, the only thing wanting to compleat it being form, so as to render it authentic – this can be supplied by the Court after testimony has been adduced. – It is not necessary that there should be a full proof in writing of all the circumstances of the agreement if any leading facts appear that lead to a belief of the sale having been made. see. Poth. Obl. № 804. – 1 Domat. Lv. 3. tt. 6. Se. 4.

As to the difference of the sum stated in Exhibit № 1. £675 – and that afterwards offered viz. £618 – it appears by the testimony above ment. that Defend. had agreed to accept this last sum – the only difficulty was about the part. of it, but not the amount – but had no sum whatever been mentioned in the defendants offer to sell, that might be made up by verbal testimony. — Poth. Obl. № 770. & 804

Rolland for Defendt.–

The Plff cannot avail himself of his exhibit № 1. to form a "commencement de preuve par ecrit", because he has alledged an agreement between the parties different & contrary to what is cont. in that exhibit, viz. that Defend. sold the lot in question for £618 – instead of £675 — now by law no com. de p. par ecrit can be founded on a paper so variant from the agreement alledged. cites. Dunty. Part. 2. Ch. 1. p. 452. № 5. 7. 10. 11. 12. & 13. — Even where a sale has been agreed on, but part of the Convention was that a deed should be executed in due form, and no such deed has been made, the commenc. de p. par ecrit cannot be admitted

cites

cites Poth. obl. N°. 764.

That the protest can form no "commencement de preuve par ecrit" - it is no authentic act - the Defendt. was no party to it, nor is it signed by him - and it is a rule, that no person can form a commencement de preuve par ecrit. by any act of his own or by the act of third persons not parties concerned - cites. Poth. obl. N°. 773. 4 - Dauty. p. 456 -

The depositions of the witnesses on the inscription de faux cannot be used for any other purpose than that for which they were made - nor can the testimony adduced thereby which has been rejected as insufficient, be used as proof of a new fact which the parties had not in view at the time it was taken

Avigé of Counsel for Defdt. states that the exhibit N°. 1. upon which Plff chiefly relies, can form no com. de preuve par ecrit, as it is not clear or certain, not consistent with the pretentions of the Plff, nor is the Plff named therein as being the purchaser of the lot in question - That had the parties agreed upon all points of the Sale and the agreement been drawn up conformably to their intentions, yet until the act was perfected by the signature of the Notary & the parties, either of them might retract from the bargain without being compellable to execute it - cites. Parfait Not. 1 Vol. p. 63. liv 1. ch. 14.

75)

Vincent & ux
vs
Jos: Braie
& Labonté &
al:

On action ag^{t}. the defendants, brothers & sisters of the Pltff^{s} wife, to render an account of the Succession of their father & mother deceased, which the defendants hold in their possession. —

The Pltff^{s} state that the defendants have become possessed of all the property and estate of their late father and mother which they have appropriated to themselves and refuse to render any account thereof to the said Pltff^{s} who are entitled to a share in the said Successions —

The Defendants state, that they are not heirs of their late father, nor did they ever receive any thing from his succession — that all the property left by their said father remained in the possession of their mother, who rendered an account thereof as well to the said Pltff^{s} as to the defendants all of whom accepted that account and received their respective shares of the said property from their said mother and gave her a discharge for all further claim on that account. — That it was not necessary to renounce to the succession of their said father as no part of his estate ever came to their hands, & therefore such renounciation can be made at any time when required — That all the property

they

they now hold which formerly belonged to the Succession of their said father and mother, they acquired as legatees of their late mother, by virtue of her last will and testament bearing date the 2d June 1802, who as proprietor thereof had a right to bequeath the same to the defendants. — It has been objected to this will that it was made "par signe et par geste", but from the testimony adduced it appears that the testatrix had sufficient judgment at the time and understood well what she was doing and although she was attacked at the time by a paralitic stroke, yet what she said was perfectly intelligible — That she died about two years after having made her will, and never altered any part of it, during which time she had all her usual intelligence, attended to the duties of her religion and to her ordinary employments as usually she had done —

The Plaintiffs reply, that the defendants represent their mother, who had possession of all the property of the Community at and after her husbands death, and are therefore accountable to the Pltff for their claims on his succession — The Defendants state

that

that they are proprietors of what they now possess of the Estate of their father and mother under the said last will and testament of their said mother; but they also hold part of the property which belonged to the Community between their late father & mother under a certain deed of Cession & Donation made to them by their said father & mother by deed of 30th. Janv. 1783, but which could not be made to the prejudice of the Plaintiffs right of "legitime" in the succession of their said father and mother - cites. "Encyclop. de Jurisp.ce vo. Legitime" — That the renounciation made by the defendants to the succ.n of their father & mother is wholly void, being made in their life time — That there are other lands which the — Defendants hold & which belonged to the said Community and not included in the said deed of Cession, & of which therefore they must render an account to the Pltffs. — That the acte sous seing privé, dated 29 July 1796 under which the defendants claim the Cattle given to them by their father and mother is also void, as no donation can be made by any acte Sous Seing privé.n

As to the last will & testament of the late Charlotte Piedalue, the mother of the defendants, it is void in law being made by geste & signe - cites. Poth. Testament, Ch. 1. art. 1

That

That the testatrix never spoke after making her will, but shewed her intentions by signs only—

Objects particularly to the testimony of Mr Gauthier the notary who drew the will, as it was improper to examine him on the validity of his own act, and also because he was brought up a second time to contradict the testimony of some of the Pltff witnesses, after having been made acquainted with what these witnesses had deposed—

Saturday 7th October 1809.

Present.
All the Judges.

Sarault v. Marmier & Noel et al' — Interlocy. Judgt. referring to Experts the view of the wall in question to ascertain whether it be mitoyen or not and the supports laid thereon by Defendt. —

Berthelot v. Esty — On hearing on exception raised by defendant, that he is a merchant and trader & not a shoemaker —

The Plaintiff prays Judgment on the proofs adduced by him that Defendt. is a shoemaker. —
The Defendt. objects that his proof is sufficient to shew that he is a Merchant and not a shoemaker. —

Winkelfoss v. Delorme — On report of the Surveyors of their operation in drawing the line of division between the Seigniories of St. Charles and Yamaska —

The parties acquiesced in the operation and prayed Judgment thereon. —

Richardson
Tutor &c
vs
Leduc. &c

} action petitoire for the recovery of a lot of land possessed by the defendant in the Seigniory of Beauharnois — without title or acknowledgment from the Seignior

The Defendant states that he obtained leave to settle on the said land Six years ago from the late Mr Winter then Seignior's agent, and in consequence of such leave has made improvements on the land, by clearing away the wood, making fences and ditches thereon, and this with the knowledge of the Plaintiff and his agents who never interrupted him in anyway —
The Pltff prays Judgmt as Defendt has not proved any right to retain the land in question. —

Poutré
vs
Lavoie. &c

} On report of Surveyors —

The Defendt prays the homologation of the report. —
The Plaintiff objects that the line drawn by the Surveyor runs through his garden — which is not agreeable to the Judgt according to qt the line ought to have been prolonged in the same direction as the end of his house. —

81)

Chaboillez
vs
Roi
&
Durocher Gar.

action for recovery of money on a deed of sale from the Garants Durocher & Perinault to the Defendant, assigned by them to the Pltff –

Rolland for Defdt –

The Pltff's action is premature – it has been prosecuted without any previous demand from the Pltff, and the action commenced the same day the assignment was made to the Pltff – and it has been prosecuted before the expiration of the delay given to Defendt by Durocher before he made the assignment – that Defendt is entitled to avail himself of this delay agt the Plaintiff, as he can have no greater right than the persons who assigned to him cites. Poth. Cont. Vent. N° 558. – To shew that delay was given him, he refers to Mr Durocher's letter to him of the 19th March 1806, which shews that money now demanded was to be paid in two equal halves, one of which had not become due when the action was brought – and by the ~~Mr Durocher's~~ propositions of the 10th May 1806, a still greater delay is given and other propositions made than those in his letter of 19th March – By Mr Durocher's answers to the faits & articles it further appears that a delay had been given to the defendt for payment of the money now demanded – The Pltff as representing Mr Durocher

cannot

cannot withdraw the delay which has been so given, unless the defendt were in default to comply therewith – that the conditions now alledged by Durocher not to have been complied with by the defendant, in obtaining the above delay, that is in having the same added or noted on the deed of Sale, must be presumed to have been accepted by the Defendt – all delays to the debtor are favorably explained – cits. Poth. Oblig. N°. 233. – That if any Judgment be given agt Defendt it can be only for a part of the money, viz. £200 – and ought to be without Costs. –

Mr Quesnel for Mr Perrinault one of the Garants, says, that as he had left to Mr Durocher the whole management of the business, he acquiesed altogether to what had done by him –

Bedard for Durocher

Agreeable to the practice of this Court and the decisions thereof no other signification of an assignment is necessary than that given by the summons and declaration – That Mr Durocher never gave any delay for payment as pretended by the defendt – the delay he gave was conditional, on Defendt paying the interest of the Capital from May 1807, & on his getting the term & conditions of delay subjoined to the deed of Sale – which conditions the defendt never accepted but on the contrary refused to pay any interest – There is no proof of delay to be drawn from the answers of Durocher to the faits & articles, but upon the same conditions qt Defendt refused to accept.

That

That even if Mr. Durocher had promised delay to the Defendant verbally, such promise can be no bar to the Pltffs action, nor can the answers of Mr Durocher to the faits & articles be admitted agt. the Pltff, a third person.—

Mr. Vigé for Pltff in reply.—

The condition insisted on by the Garant Durocher, that the same should be subjoined on the minute of the deed of Sale respecting the delay given, was only in favor of the Defendt, and could not be considered as affecting the promise of delay.— The Garant in his answers to the faits & articles says, that Defendt told him he would not pay interest, but a party can never make a proof in his own favor by his answers to faits et articles — nor can the Garant change his promise of delay even upon the pretended conditions he alledges without having put the debtor en demeure.— The proposition made by Durocher was that Defendt should pay a part of the sum in february 1809 — and the suit is commenced for the whole in Octr. 1808.—

Beaupré vs Lafleur.— } On action for certain Oxen sold by Pltff to Defendt

The Pltff says, that he is a dealer in Cattle and that it is part of his trade by which he gains his livlihood to buy and sell cattle — that he has made proof of this fact as well as of the sale of Cattle & thereon prays Judgment.—

The

The defendant objects to the admissibility of parole evidence to prove Plaintiff's demand, and says, that by other cases — determined in the Court, such evidence has been rejected. cites. Brosseau. vs. Monarque. 19. June 1802. ——— and Monarque. vs Laflem. — 20. April 1803. — In the first case the Pliff was stiled habitant and grazier — and in the other, butcher & trader — and in the latter case the Pliff was not allowed to prove that he was a trader. —

Monday 9th October 1809

Witness day.

Hebert vs Caillé } On motion to quash a writ of Summons, as same had not been served on the defendant under the delay of five days prior to the return, agreeable to Rules of Practice —

There being no sufficient cause shewn to the Contrary, and the Court being determined to adhere strictly to the rules of Prac^e the motion was granted —

Richardson Tutor^ee — vs Leduc. — } Judgt. of the Court was that the defendant should deliver up the land in question to Pliff, he having no sufficient ground to retain the possession or claim a title thereto. —

Tuesday 10th Oct. 1809

Witness day

Wednesday 11th Oct. 1809

Present

All the Judges.

Mallard
vs
Roi. —

The Court were of opinion that there was not a sufficient commencement de preuve par ecrit to admit verbal testimony of the Sale — and this upon the following grounds.—

1st The exhibit No 1. filed by the Pltff, contains at most but a proposition of sale of the lot of ground in question, in which the Plaintiff is not named, nor does it appear that he ever acceded to the terms contained in that exhibit — On the contrary the Pltff alledges that instead of £675. the sum therein mentioned as the price of the said lot, the Defendant's agreement with him was to take £618 — only — an allegation variant and contrary to the tenure of that exhibit, and which therefore destroys its admissibility as a commencement de preuve par ecrit. se Dunty p. 452. No 5. Ifan —

The

The points N°. 2. & 3 insisted on by the Pltff have no weight as nothing appears therefrom to ground a presumption of a Sale. —

As to the Protest — the defendants answer thereto — and the testimony adduced thereon, the Court were of opinion that it was insufficient to constitute a commencement de preuve par ecrit — because no party can make such a proof by his own act, nor by the act of another, so as to bind a third person — the rule being, that there must be some writing signed by the party against whom such proof is proposed to be made — Poth. Obl. N°. 773. & Danty. p. 456. X — The Court where however inclined to think that if the Sale had so far received its execution as to have put the Pltff in possession of the above lot, the rule would receive a different interpretation. Danty. p. 593. — That the testimony adduced upon the protest being upon a Collateral point and not meant to apply to the question now before the Court, it ought not to be received as forming any proof upon the present question —

X Gervais v. Bizaillon decided 1 Oct. 1799. —

Porter
vs
Marston
Curr. & al

Action petitoire to obtain from Defends certain lots of land. —

To this action it was pleaded that Pltff was an alien and could not take or hold lands without special licence from the Crown. —

The

The Pltffs counsel states, that the Pltff was born in america before the rebellion, and cannot be considered as an alien — That after the peace in 1783, he came into this Province; renewed his allegiance to the King and obtained a grant of lands in the Township of Broom — That the grounds upon which the Defendts plea could be supported are, that the Pltff was born out of the Kings allegiance, that he had obtained no letters of Denization nor been naturalized. 1 Bl. Com. p 372. — but here the Pltff was born in the Kings dominions — his residence in America cannot alter his right — as many half pay Officers & other British Subjects live there —

Stuart for Defendt —

The Pltff has made no proof that he was born within the Kings allegiance, only that he lived in America before the war, and that he has lived ever since there — His living constantly there imports that he is an alien — Even if he had been born within the States before the war, & chose to adhere to that Country after the peace and make his residence there, he has become an alien, as the King has given up all claim to their allegiance, it is like a debt, which the Sovereign may discharge, but of which the Subject can never divest himself without Consent of his Sovereign — After the peace a time was given for all those who chose to make their option, by remaining in America and thereby becoming American Subjects, or by withdrawing therefrom into some of the dominions of the King, and

thereby

thereby preserve their allegiance to the King + cites. Bacons ab. vo alien. p. 129.

Sutherland as assignee of Griffin. — vs. Provan. —

Action for recovery of a ground rent due by Defendr to Mrs Griffin, and by her assigned to Pltff. —

Sol. Genl for Defts says — That defendt is troubled in his right to the land in consequence of a Judgment given in this Court at the Suit of Jn. McCord v. P. Langan. & S. Griffin, by which it was declared that the right of soil is in McCord, & therefore Mrs Griffin could not sell same to Defendr — so that Defendr is now liable to be turned out of possession & lose his land — That it is not necessary that the party be actually ousted of their possession to retain the payment of the land, if there is an existing cause which can affect their title — Dounat. Con. Vente. lw. 1. tit. 2. Sec. 10. No 3. & 23 — Poth. Cont. Vente. No 41. 82. 85-86-107-280. —

Ross for Pltff. replies — That Pltff being in possession of an Estate payt of the tenant to him is good — Poth. Obl. No 467. That by same Judgt referred to the Defendt in that Cause Langan & Griffin the said Griffin is ordered to render an account of the rents of the land, which authorises his receiving them & entitles Pltff to his action for same under the assignment — That the enjoyment of the land while the Defendt has head is sufficient to compel him to pay the said rent. —

Prior vs Myer } Action for damages agt. Defendt. now of age, for having when a minor absconded from his service as Pltffs. apprentice.—

The defendt. states, that the articles of apprenticeship were made by his father, he, Defendt. being then a minor and unable to form any obligation — and cannot now be bound for breach of a Covenant which he never made — That if Pltff can be entitled to any action upon the said articles of apprenticeship, it must be against the Defendants father who made the same.—

Start vs Dupré & ux. } Action to render account of the Community that subsisted between the late Wm Agnew and the Defendts wife, formaly wife of said Agnew

Defendants say, that they are ready to account, but think it sufficient that it should be rendered before practiciens, and not before this Court, & this to save time, as the usual course of the Court is to refer such account when rendered, to Practiciens.—

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90)

Hibberson. — vs Coffin. —

Action for recovery of monies advanced by Pltff to Defendt on a Contract, q.t Defendt had not fulfilled

The Pltffs counsel files a power of attorney from the Pltff to Decius Wadsworth authorising the suit, and now prays Judgment on the proofs adduced in the Cause. —

The Defendant says, that he has fulfilled his Contract with the Pltff by providing & furnishing the potashes at the place appointed, for proof whereof he refers to the testimony adduced on the Com. Rogatoire

The Pltff moves that the said Commission Rogatoire and testimony adduced under it may be quashed inasmuches the said testimony tends to prove the performce of the Contract between the parties which Defendt has not pleaded and cannot therefore be admitted to prove it. —

The Defendant states that Plaintiff has joined in the Commission by consenting that it should be sued out and by adding cross-interrogatories thereto, and further that the action is an action of assumpsit, on which payment or performance may be proved upon plea of non assumpt. cites. 1. Esp. N.P. p. 168. Bul. N.P. p. 149. 152. — and besides the objection comes too late after Cause has been set down for hearing on the merits and the testimony adduced under the Com. Rogre having been seen by Pltff. —

Pltff

Pliff replies, that although he consented to the suing out of the Com. Rogr yet the same may be rejected on motion, if it shall appear that illegal proof has been made under it.—

The Court were of opinion that as the action was in assumpsit, the proof adduced under the Com. Rogr ought to be admitted.—

The Pliff now stated that Defend. had not made sufficient proof of performance of his Covenant, and therefore prayed Judgment.—

Thursday 12th Octr 1809.—

Present.—

All the Judges.—

Porter.— v. Marston Cur. & al.— } The Court considering that Pliff had been admitted to renew his allegiance to the Crown under all the formalities required under the Instructions for granting lands in this Province, and a grant of land had been made to him by the Crown, he was thereby entitled to his present action, being sufficiently recognized as owing allegiance to the King.—

92)

Dufresne vs Souligny

On action for having cut down wood in a certain reserve of a Coupe de bois, belonging to the Pliff upon the land of one Pepin.—

The survey ordered by the Court having been made and returned, the Pliff now states, that it appears thereby in addition to the testimony already adduced that there boundaries at the extremity of the Defend^rs land at the distance of 55 acres from the river, which is all he is entitled to by his deeds — that having — cut down the wood in question beyond this line, the Pliff ought to have his Judgment.—

The Defend^t. states, that this is an action possessoire or action of Trespass, which Pliff is not entitled to bring as he is not possession of the soil, which is the property of another — that the right in the Coupe de bois is a creance personelle, which gives no right in the soil, and for which no action of trespass can lie but by the proprietor of the soil.— That Pliff is now litigating a point with Defend^t. in which he has no interest, viz^t the right to the soil, in which if decided either for or against Defend^t — he is liable to another action at the instance of the — proprietor.— The action being a mere possessory

action

action no titles ought to be looked at, the testimony alone should regulate the decision, according to which the Defend^{t} has the better right, and were it even a matter a doubt, equity ought to preponderate in favor of the defendant — By the report of the Surveyor it appears that he measured only the Defend^{rs} land, whereas he ought to have measured the Plaintiffs land also, in order to ascertain the right to the intermediate space of ground —

The Plff in reply says, that he is an Usufruitier of the Coupe de bois, and has an action of trespass against every person who cuts down any wood thereon — That Chartrand has proceeded agreeable to the Interlocutor and the testimony in the Cause. —

Cuvillier vs Scott } Action of Indeb. ass^{t} for monies advanced —

Defend^{t} says, that the Contract on which the action is brought was made by Defend^{t} and one ~~Scott~~ Fraser jointly to deliver a certain quantity of timber to Plff, and therefore Defend^{t} cannot be sued alone on that Contract — as Fraser may have satisfied the Contract without the knowledge of the Defend^{t} or may have a defence to make which would destroy Plff^{s} demand — That the Contract was not made double as by law required, it being a Contrat Synallagmatique between the parties, & there appears nothing to shew that it is a Commercial Case. —

Plff

Plaintiff in reply says, that the questions raised by this Exception have been already decided – That Defendant Scott and Fraser who made the Contract with him were at the time of making the same, Partners in trade, and by law, either or both could be sued for the performance of it. cites. case Desrivieres v. Hatt. 5. April. 1809 – and Hibberson v. Coffin.

That the Contract between the parties is for a Commercial purpose, the buying & selling of timber, & has been so held in a Similar case. Marchand v. Darche. 20 Oct. 1808. where proof of Contract was admitted although not made double. –

Defend^t. answers – That Contract does not purport to be a Commercial Contract, but made as between Individuals and ~~jointly~~, but without reference to any partnership between the parties – The parties have undertaken jointly and ought to be sued jointly, one cannot safely plead without the other. –

Charron v. Charron } Action by Plff ag^t. his father to render account of the Community that subsisted between him & his late wife the Plaintiffs mother. –

The matter having been submitted to Practiciens, they ~~made~~ their report stating the account in question,

to

which the defendant objects, that the praticiens proceeded without due notice to him – That they acquainted the Defendt that would attend at a certain day, but afterwards attended at a much earlier day of gl Defendt had not sufficient notice – of this fact he files two affidavits, and prays to be admitted to make proof thereof.

Pltff replies, that Defendt had six days notice, which was sufficient.

Burton vr Phelps.

Ou action of ~~trespass and damages for cutting down wood~~ Revendication for wood cut down on Pltffs Seigniory.

The Defendt pleads, that by deed of Concession of the Plaintiffs Seigniory dated in 1733. the Crown has reserved all the oak wood thereon – That the Crown having occasion for such Oak wood made a Contract with Messrs Scott Idles & Co who in consequence obtained a licence to cut down all such wood on the reserves of the Crown, that Mure & Joliffe of Quebec are employed by said Scott Idles & Co in that business and by them the said Defendt has also been employed, – that defendant under the above facts is perfectly justified in cutting down the oak wood on the Pltffs Seigniory of which facts he prays he may be admitted to make proof.

The Plaintiff says, that the Plaintiff as Proprietor and being

being in possession of the Seigniory is entitled to his action against the defendant as a Trespasser, and that Defendt could not set up a right to the wood in another person, nor in anywise dispute the right of possession of the Pltff cites. Poth. Prop. № 108. — Even a proprietor where he commits a trespass is liable to this action. Poth. Ib. № 292. 3. — That if the property be in the King as Defendt alledges, he is the only person who can contest the right of the Pltff, and ought therefore to be made a party to the Suit. — That the clause in the deed of Concession respecting the Oak wood, must be considered more as a charge, than as a reserve, and means merely that the Seignior should preserve and cultivate the Oak timber that the King may at all times be enabled to procure a necessary supply thereof when he has occasion for it, and which ought to be given to him on paying for it — That supposing such wood to be a reserve, and to belong to the Crown, the defendant even under the licence he pleads, cannot lay waste the Plaintiffs Estate nor enter thereupon, but ought through the medium of the Surveyor of the woods to have previously ascertained the number and quality of trees to be cut down and in what places — but according to the defendants mode of proceeding there is no restriction to the number

of

of trees to be cut-down, he may carry off every tree on the Seigniory and plead the Kings licence for it, such is the dangerous consequence of the pretended authority under which the defendant wishes to shelter himself — That in the Contract, there is authority & licence given to cut down Masts and bolsprits, which ought not to be cut on the Plaintiffs Seigniory, as the only wood reserved is Oak timber. — That Defend^t. must be considered as a Trespasser not having demanded permission to cut down any wood on the Plaintiffs Seigniory, nor shewn any licence or permission for doing so. —

Sol. Gen^l. for Pl^ff. — pursued the same ground of argument as the foregoing Counsel — adds — that although the Concession of the Seigniory is made <u>à la charge de conserver</u> the oak timber thereon, yet as nothing is stipulated that the Crown shall be entitled to cut-down & carry away this wood without paying for it, the presumption is that it ought to be paid for, as every grant from the Crown ought to be favorably construed for the subject and against the Crown — cites — Domat. liv. 1. p. 22. — Poth. Obl. N^o. 98. 99. —

Stuart for Defend^t. in reply, says, that the Contract with the Crown is for Masts and Oak timber, and the licence covers whatever is mentioned in the Contract — That notice

to

to the Seignior is not necessary, nor can the want of it alter the nature of the property — That the reservation in the deed of Concession is for the benefit of the Crown but if the Crown were bound to pay for such wood as is reserved it would be no benefit. —

Friday 13th & Saturday 14th

Witness days. —

Monday 16th Oct. 1809. —

Present

All the Judges.

Lascelles & Bourmier
L. Robertson. —
D. Sutherland. Interv.

} Action for damages for non-delivery of goods on Sale thereof by Defendt. to Pltff. —

On trial by Special Jury. —

The Intervening party was examined on faits & articles before the Jury by consent of the parties —

The depositions of Franc. Ducharme and Joseph Boyer

two

two witnesses about to leave the Province, who had been examined in the vacation, were read to the Jury. – These depositions stated that goods at Detroit cost from 70 to 75 ℔ Cent on the Sterl. Cost in England, and that such goods may be sold in the american territory at Detroit at a profit. –

Rosseter Hoyle. a witness for the Pltff. says that in the year 1807 he was Clerk to the Defendt. – That in the month of August of that year Lascelles one of the pltffs made an agreement with the defendt. for a quantity of goods for the Indian trade – which goods are mentioned in the defendts Invoicebook and on having recourse thereto, says, that the said goods are entered therein as bought by Mr Lascelles of Pat. Robertson the defendt. and amount to £915. 18. 8 Cy. including all charges and 40 ℔ Cr. advance on the Sterl. cost – That no copy of this Invoice was ever delivered to the Plaintiffs, nor were the goods entered in any other of the defendts books as was usual where the Sale was compleated by delivery – That the goods were packed up in 11 bales and 3 trunks – the amount of those in the trunks might be about £230. the keys of which the witness delivered to Mr Lascelles at Montreal. – That the goods were forwarded to the Stores of Mr John Grant of Lachine, as was usually done for other Customers living in Upper Canada who purchased goods from the defendt. That the goods were payable in

12 months - That the Pltff was to send a parcel of peltries to Mr Robertson that fall to be by him forwarded to England and sold on the Pltffs account and the proceeds put to their credit with Defendt for the goods in question - On question by the Court - says, that he considered the Defendant to have a controul over the goods until they were delivered to Lascelles by Mr Grant at Lachine.-

x^d^

The goods were sold to Mr Lascelles alone, there was no mention of Mr Boismier, nor of a partnership with him - That it is usual to hang the keys of trunks to the handles, but owing to depredations which been committed on the goods packed in trunks, the keys have generally been delivered to the person purchasing the goods where it could be done.- That goods sent to Mr Grant's store at Lachine are liable to the order and controul of the person sending them, until directions are given to Mr Grant to deliver them -

William Reeves. was a Clerk in the Defendts employment in 1807, and has a knowledge that a parcel of goods were laid aside for Mr Lascelles one of the Pltffs - the goods were made up in bales marked A I B, and a part of them forwarded to Mr Grant's Store at Lachine by the defendants order.- That some of the goods which Mr Lascelles wanted were not to be had in the Defendants store, and the witness went to different other

Stores

stores in town by Defendts directions to procure those goods in order to compleat Mr Lascelles assortment, which goods were also included in the above bales. —

John Richardson. Is one of the House of Forsyth Richardson & Co of Montreal. — That when any of the correspondents of that house in Upper Canada order goods to be sent them, it is the practice of the house to send the goods to Lachine to be put into Mr Grants store there, and one of the Partners of the House goes out to Lachine to see them put on board their own boats to be forwarded to Upper Canada. — this may deviate from the general practice, respecting which he cannot speak — positively. — That even where a Customer picks out his goods at the Stores of the said House and lays them aside, it is still the rule with them to send the goods to Lachine and to see them put on board their boats there. — Considers the risk of the purchaser to begin at the instant the goods leave their Store, but thinks they are liable to the controul of the house until put on board the boats at Lachine —

John Grant. That the witness keeps a Store at Lachine. — In august 1807, he received several bales of goods from the Defendts marked ALB. — That Mr Lascelles one of the Plaintiffs called at the Store to enquire if goods had been sent there for him, to whom witn answered that goods had been sent there by

the

the defendt marked as above, which witn said he supposed to be for him - That witness afterwards refused to deliver the goods to the said Lascelles in consequence of orders he received from the defendt That goods were in the Store about 14 days, and the Storage was charged to the defendant - That the witness Mr Lascelles's boat at Lachine ready to receive the goods but he had refused to deliver them before the boat arrived. - That the wit: received and held the goods subject to the defendants order - and it is a rule with him to hold the goods subject to the order of the person who sends them to his Store - and in the present instance he received the goods with directions to keep them till further orders.-

Thomas Trenchley - Is a Carter - was employed in august 1807 by the defendant to cart goods, which he said were Mr Lascelles' goods, from the defendants Store in Montreal to Lachine - which goods consisted of bales & trunks and were marked ALB - the witness deposited said goods at Mr Grants Store -

Michel Dumas - Is a merchant in Montreal, and sends goods to his Customers in Upper Canada - that he considers the risk on such goods to commence at the moment they leave his Store, and are the property of the purchaser -

Armour - Is in the habit of selling goods to Merchants in Upper Canada - considers the goods at the risk of the purchaser

purchaser from the moment they leave his Store.— That he thinks, that the merchant selling his goods in this way and sending them to be stored at Lachine has still a power over them so as to countermand their delivery.—

Fran.s Toupin. That he was at Detroit in the year 1807, at which time the Plaintiffs usual mark on goods addressed to them was ALB.— That witness was at Lachine in the month of August of the same year when Mr Lascelles one of the Plffs demanded his goods of Mr Grant who refused them.— That Mr Lascelles had his boat then ready and a sufficient number men hired to carry his goods to Upper Canada, but in consequence of Mr Grants refusal to deliver them he was obliged to go off with his boat with scarcely any loading.— That the Plaintiffs were considered as doing well and carrying on a profitable business at Detroit in 1807.—

Pre Morisseau.— Is one of the men hired by Mr Lascelles to go up in his boat in August 1807.— That they set out from Lachine and arrived safely at Detroit, and was paid by Mr Lascelles.

August.n Berthelet. That in October 1807 he received 32 pacquets or parcels of peltries marked ALB, which belonged to the Plaintiffs with orders to deliver them to the defendant and to get the goods which Mr Lascelles had purchased from him.— That the witness in consequence offered the said

peltries

peltries to the Defendant and demanded the goods, who refused to deliver the goods, but said he would forward the peltries to England on account of the Plaintiffs without Commission. That in consequence of the defendants refusal to deliver the said goods the witness caused a protest to be made against him — Which protest, dated 19th Oct. 1807 was now read.

Here the Pltffs closed their evidence

—

Rosseter Hoyle being again called upon as a Witness in chief for the Defendant, says, that no Invoice of the goods was delivered to the Plaintiffs, and he considers there was no delivery of the goods made for want of such Invoice — That prior to the year 1807 the defendant did business with Lascelles in his own name, & when he had no partner, and this year at the time of bargaining for the goods in question he never made any mention of a partnership with Boismier — That he was present at a conversation between Mr Lascelles and the defendt in Septr. 1807 on the subject of the said goods, when the latter said — "on reflection I have determined not to deliver these "goods" — that Lascelles seemed not much disappointed, and said, "very well Mr Robertson, if you will not deliver them I "shall not have to pay for them," and then asked defendant if he would let him have some blankets for his men which the defendant delivered to him. — That from what then passed between the parties the witness

considered

considered the bargain as given up by Mr Lascelles —

William Reeves — says, that he saw Lascelles come to the defendant's house some time about the end of August or beginning of September 1807 — that wit. left the room and did not hear all the conversation that passed, but upon Mr Lascelles's going away he heard him say, that it was all the same to him whether he got the goods or not —

Here Defendt. closed his evidence

The Court were of opinion that even if the delivery should be considered as not compleated under the custom of the trade, yet as a bargain had been entered into between the parties for the delivery of goods, the defendt. by his refusal became answerable in damages to the Pltff. in this respect — the amount of the damages and whether the Pltff Lascelles had given up the bargain were proper objects of consideration for the Jury. —

The Jury gave a verdict for the Defendant

Jas. McGill &c.
v
Burton —

action en bornage. —

Beaubien for Pltff., states, that they are Joint proprietors of three lots of land in the township of Stanbridge, viz. lots No. 2. 3. & 4 in the twelfth range, which are bounded

on

on one side by the Seigniory of Noyan, the property of the Defendt. – between which said lots and the said Seigniory no line of division has ever been legally drawn nor boundary marks established, which Pltffs. pray by this action may be done and the Defendt. adjudged to restore such part of the said lots with the fruits and profits thereof, as he may now illegally possess. –

Rolland for Dfdt. says, That Pltffs do not shew enough on their declaration to entitle them to their action, as it does not appear that they are proprietors of the said lots, having never had possession under their title, – and that title without possession will not convey the soil to the Pltffs. cites. case. Fowler. v. Elderkin & Phillips. Opp.t. –

That the Pltffs claim right to only three lots in the S.t township and cannot therefore compel defendt. to an admeasurement and division of the said Township and the S.t Seigniory, the right to demand such division can be exercised by the whole of the proprietors jointly, or by the King as L.d paramount of the whole but not by every individual proprietor of a lot. –

That the present action is wholly unnecessary as before the issuing of the letters patent of the s.d township, the same was divided and laid out in lots agreeable to a plan made by the Surveyor General under the instructions of the Crown, agreeable to which the Pltffs now hold their lots, and cannot demand any other division or survey of their lots.

That

That the line of division hath been drawn & boundaries planted between the said township and the S^r Seigniory by ~~M^r Gourdy~~ Pennoyer a Surveyor, as appears by his report & plan in 1796.

That the Defd^t possesses no more land than was granted to his predecessor the Original Grantee of the said Seignory by Deed of Concession of 8^r. July 1743, which he is entitled to hold as having a prior title to that of the Pltff^s. —

M^r. Beaubien in reply, states. That the Pltff^s alledge sufficient matter in their declaration to entitle them to their action, and that they are in possession, and their proximity to the defend^ts entitles them to their present action ag^t him. Poth^r. voisinage. N^o. 31. — Poth. Propriété. N^o. 324. to shew that title alone is suff^t to warrant the action. —

That every Individual proprietor of a lot of ground however small is entitled to an action en bornage with his neighbour Poth^r. voisinage. N^o. 31. —

That the defend^t has encroached upon the Plaintiffs lots and passed the line intended as the division line between them and the defendants Seignory. — That Pltff^s consent that the lines laid down by the Surveyor General for the separation of the said Seignory from the said Township be verified, and boundary marks planted therein so as to divide the lots of land in question from the said Seignory. —

That the lines drawn & boundaries planted by Pennoyer in 1796, cannot settle the present question, as his operation was ~~made~~ prior to the grant of the Township of Stanbridge.

and

and was an ex parte business, done at the request of the late General Christie. — And by that operation it appears that there is an encroachment on the lands of the said Township by the defendt. of 1482 acres in superficies, and which he possesses over & above the full quantity of land mentioned in his title —

That Pltffs. consent that the lands be measured agreeable to the titles of the parties. —

— —

Tuesday 17th. October. 1809. —

Judge Ogden. absent

— —

Mallard vs. Roi. —

The Plaintiff moved to examine the defendt. on faits & articles

The Defendt. objects, that Pltff is not entitled to his motion inasmuchas he has not stated enough in his declaration to obtain a title from the defendt. of the lot of ground in question — It is alledged by the Pltff that Defendt. had promised to pass a title before a Notary, but as this was not done the Pltff cannot claim any right to the land, nor can he maintain the present action to obtain a title to it. Poth. Oblign. № 767. And it is even allowed to the parties to retract after

they

they have gone before the Notary to execute a deed, at any time before the act is perfected by the signature of the Notary cites Fer. Parf. Notaire. 1 vol, p. 63. liv. 1. ch. 14.

The Pltff replies, that he is entitled to examine the Defendt upon faits & articles, and that the extent of the proof to be obtained in this way must be afterwards applied to the action - That if Pltff has made an insufficient demand the Defendt should have demurred thereto and obtained the opinion of the Court thereon, but the right of action cannot be called in question under the present motion, under the general denegation pleaded by the defendt to all the facts stated in the Plaintiffs declaration. -

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Keese. - v Marchand

Action for Trover. -

The Defendt pleads for Exception to the Pltff action, that as it appears that Pltff is an alien residing in a foreign Country the person conducting this Suit ought to have filed a sufficient power of Attorney to shew that he was warranted by the Pltff to institute and carry on the same - That the rules of practice require such power of Attorney, and the Judgments of this Court are in conformity to those rules. cites. Hibbersom vs Coffin.

The Plaintiff answers, that the exception comes irregularly before the Court, as the same ought to have been made by motion and not by a pleading in writing - That the objection is

besides

besides ill founded, as every attorney prosecuting a Suit in this Court must be presumed to be vested with sufficient power from his Client to carry on the Suit, and do all the necessary acts relative thereto, and no procuration ad negotia is necessary. That Case cited of Hibberson vr. Coffin was particular owing to the issuing of a Capias agt. Defendt. which requires an express power.

Trucheon et al
vr
Trucheon.

action for recovery of certain articles of a rente viagere pension viagere. The Pltffs. claim as heirs of their deceased father & mother to whom the rent was due, one years payt. thereof expired on the 29th. Septr. last, or St. Michel.

The defendt. states, that one of the Donors died on the 29th. Sept. and the other three days after — that the rent was never paid at St. Michel as many of the articles were not then in a situation to be delivered, but was always paid as wanted in the course of the winter, and Pltffs. cannot be in a better situation than their father & mother, to whom nothing was due at the time of their death.

The Pltffs. in reply say, that by the deed of Donation the rente is made payable at St. Michel every year, and unless the Defendts can shew they have paid at last St. Michel what is now demanded they must necessarily be adjudged to do it.

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111)

Ferlin. — vs — Beique.

Action for wages of Pltff's child. —

The defdt pleads for exception — that in April Term last an action was instituted in this Court by the Pltff agt the defendt for the same object as the present, but for a smaller sum — that demand was submitted to the opinion and award of Arbitrators, who made their report by which it appeared that nothing was due to the Pltff, in consequence of which report the Plaintiff discontinued her suit. — That the matter in contest by this action must be considered as a chose jugée, and the action ought therefore to be dismissed. —

The Pltff replies, that the facts upon which the present action is founded are not the same as those stated in the former action, nor is the sum demanded the same — That Defendt cannot plead a chose jugée to this action as nothing has been adjudged thereon between the parties — the Pltff had a right to discontinue her former action, and that right was granted to her upon payment of Costs, — which entitles her to a new suit — That if the award of the arbitrators were such as to determine the right between the parties, the defendt ought to have availed himself of it and not consented to a discontinuance of that suit, but having consented to that discontinuance the right of the Pltff is thereby saved, as the parties have agreed to abandon what had been done in the former suit. —

Wright. — v Benedict —

Action for recovery of damages from Defendt. for detaining a pair of Mill-stones from the Pltff, which Defendt. purchased from a third person knowing them to be Pltffs property. —

Pltff. states that he employed one Walker to hew a pair of millstones for him, which when hewn he sold to Defendt. who knowingly purchased same as Pltffs property —

Defendt. answers that Walker was the proprietor of the stones and had a right to dispose of them — that he had bestowed his labor in preparing them & offered them to Pltff who refused to take them at the price demanded whereupon Defts. purchased same as he had a right to do. —

Castonguè v Labergé —

Action on an Obligation —

Defendt. pleads that the Obligation was given for usurious considerations, and States — that defendt. had purchased a lease of a Saw Mill from one Perry, and applied to the Pltff for a loan of the money to pay for s[aid] lease. That Pltff agreed to advance him the money upon condition that, the lease should be transferred from Perry to him the Pltff, who would re-assign the same to the defendt. in consideration of which the Defendt should deliver annually to the Pltff at Montreal a raft of wood consisting of ten rows or rangées and which is worth about Sixty pounds — and that the defendt. should also execute an

Obligation

obligation for 3000^{tt}. the money advanced to be made payable without interest — to all which the defendant agreed, and the Obligation now sued for is the same which he executed — That this transaction is highly usurious, and he ought to be admitted to make proof thereof. cites. 1. Domat. p. 71. — Poth. traité. d'Usure. N^{o} 88. 89. —

The Plaintiff denies the above allegations, and says generally that Defend^{t} cannot be admitted to make proof of usury against the Obligation he has signed. —

Molloy. v Connolly } Action of assumpsit for goods sold & monies advanced by Pltff to Defend^{t}. —

The Cause being at issue, a day was given to the parties to adduce their respective proofs, which they did — The Pltff not having made sufficient proof of the whole of his demand now moved that the balance of his account should be settled and ascertained by arbitrators to be for this purpose named by a rule of the Court, to obtain which he says, he has proved sufficient by the testimony he has adduced — cites. 1. Pigeau. p. 246.

The Defend^{t}. objects — & says, that Pltff is not entitled to his motion after having adduced his proofs before this Court. — That Pltff has failed in his proof and now wishes that Arbitrators may be named in hopes that they may draw a different conclusion from the proofs he has made, than the Court would have done, which would be dangerous and improper to allow — That arbitrators ought to be

named

named to settle differences where there are mutual accounts between the parties, but here there is only the account produced by the Pltff.—

St Henry.— vs Marmier } Action on a promissory Note made by Defendt.—

To this action the Defendt. pleads prescription of six years. The Pltff replies, that the Note was made in the State of Massachusets, and that shortly after the making thereof the Defendt. left that State and came into this Country, but that by the laws of the said State the Defendt. cannot avail himself of that plea, as no prescription runs during his absence therefrom and by the laws of Canada, the prescription cannot take effect as Pltff has not been resident a sufficient time in that Country.—

The Court ordered the parties to proceed to their proofs.

Meunier fils vs Guerin.— } Action for recovery of monies due by Defdt. to Pltff. on a deed of sale of a certain lot of land.—

The Defendt. pleads that he paid part of the sum demanded viz. 676 to a third person by the order of the Pltff. and prays that a day may be given to him to make proof thereof.— as to the balance of 225 he admits it to be due.—

The Pltff objects to a further day being given to Defendt. as the payment he alledges is without foundation and only meant to gain delay, and he has filed neither the order of the Pltff nor the receipt of any person for the money he alledges to have paid, and verbal proof cannot be admitted.—

Gariepy vs Lajoie. &c

Action for value of two Oxen sold & delivd. to Defdt. by Pltff

The Pltff prayed Judgt. under proof made by faits & articles submitted to the Defendant.—

The Defendant's counsel objects that the faits & articles were not served personally on defendt. and therefore he is not bound to answer thereto.—

The Plaintiff replies that the faits & articles were served at the defendants domicile, which is enough as personal is not requisite when the party appears by his Counsel as the defendant has done.—

Manson vs Fraser.

action for damages agt. defendt. for retaining sundry blacksmiths tools the property of the Pltff.—

The Defendt. says that the action ought to have been instituted in the Inferior Court as the articles in question are not worth ten pounds — that defendt. is ready to deliver up the said articles but without Costs, except as in the Inferior Jurisdiction — and as to damages the Pltff has proved none.

The Pltff contends that his action is well brought & that he is entitled to his Judgment.—

Stewart vs Pre. Archambault & Cba. Archambault

Action on a notarial Obligation.—

The defendt. Pre. Archambault says, that the Obligation

Obligation upon which the action is brought is written in the English language — that he is an illiterate person and does not understand that language — that the said Obligation was never read or explained to him in such — manner as to be understood by him in the French language. That it is alledged in the said Obligation that the consideration for which the same was made was for goods sold & delivered by the said Pliff to him the said Pierre & to the defendant Charles Archambault — whereas no such transaction ever took place, nor did he the said Pierre ever understand or believe nor was it ever explained to him that such consideration was mentioned in the said Obligation, which is wholly false, as he never purchased or received any goods from the Pliff.

The defendt. Charles archambault says, that since the making of the said Obligation he has delivered masts and other wood to the Pliff on account thereof to the amount of £500 — which he prays he may be allowed to prove, and a deduction thereof made from the Plaintiffs demand. —

The Pltff replies, that Pre archambault cannot now be admitted to allege any thing against the Obligation which he has duly executed before two notaries and it must be presumed against him that he understood and consented to every thing therein contained, or if he did not he ought to

have

have required the necessary explanation at the time, which we must suppose he would have obtained and did obtain or that he did not require it — That Pre Archambault may very well have stated himself to be a debtor of the Pltff jointly with the other defendant although he never received any part of the goods for which the debt was created, as this is often done for the greater security of the Pltff. who may have exacted this before he parted with his goods. — As to the plea of Chas Archambault it is wholly without foundation, nor ought the Pltff to be delayed in his Judgmt by reason of any pretended payments of an uncertain kind which are set up merely to gain delay. —

Robitaille vs Marchand } On a rule on defendant to shew cause why he should not be held to change Mr Joseph Lacroix the arbitrator named by him, and name another in his stead. —

In support of the rule the Pltff gave in his affidavit stating that Mr Lacroix had counselled the defendant and acted more as the attorney of the defendant than an arbitrator between the parties. —

The defendt says that the Plaintiffs affidavit is wholly untrue, and that there is no ground for changing the arbitrator That arbitrators have proceeded regularly, and as they differed

in

in opinion, were on the point of naming a third person as an umpire when the present application was made by Pltff to remove Mr Lacroix altogether — That defendant can prove the contrary of what is alledged by the defendt and prays that a day may be given to him for this purpose — Which was granted

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Raimond vs Polonceau
Polonceau. Oppt

On Opposition made by the defendant to the Sale of his effects under the Execution sued out in this Cause. —

Bender for the Oppost. states that the Plaintiffs Judgment was obtained about 15 months ago, since which time the defendant has done work, under agreement with the Pltff to this effect, to the amount of £25. — which should have been credited on the Execution — acknowledges that he still owes a balance to the Pltff of £1. 19. —

Rolland for Pltff says, that no part of the Pltffs Judgt has been satisfied by the defendt — That Pltff put some — silver into the defendants hands to work up in different articles, which has not yet been finished by him, so that he is also indebted to the Pltff on this account — agrees however that £1. 16. — should be deducted from the Execution in favor of Defendant. —

Fitzgerald vs Holt. —

Action to obtain title to a lot of land

The Pltff prays that he may be admitted to make proof by verbal testimony of the Sale by the defendt to the Plaintiff, in consequence of what has been stated by the defendant in his answers to the faits & articles submitted

The defendant says, that such proof cannot be admitted without a commencement de preuve par ecrit which does not exist in this cause, nor has the defendant stated any thing in his answers on the faits & articles, whereon to ground such proof. —

Turgeon vs Sessier. —

On Inscription en faux agt Obligation produced by Pltff.

Bedard for Defendt says, that he has made proof sufficient to set aside the Obligation — That when an act is passed before a Notary and two witnesses, the witnesses ought to be present during the whole time that the act is making and until it is duly executed by the parties - cites.

that in this case the witnesses were called in only to hear the act read, which is not sufficient

Lacroix for Pltff. alledges that the Obligation was executed according to legal form, and that the Defendt has made no proof to the contrary. —

Sutherland vs Cuvillier } action for rent of a Constitut.-

The defendant objects that the deed of sale made to him by Griffin and wife, whose right the Pltff holds, is wholly void, as the land they sold has by Judgment of this Court been declared to be the property of another, whereby defendant is in danger of being turned out of possession which is sufficient reason for with holding the payment of the Constitut or rent thereof now demanded. cites. 1 Domat 1 lw. tit. 2. Sec. 10. N° 3. & 23. Cont. Vente. — That the appeal sued out from the said Judgment does not alter the case nor quiet the defendants title; at all events the Plaintiffs suit ought to be suspended until the event of the Appeal be known. —

The Pltff submits the Case on the same grounds already offered in the case of Sutherland. vs. Provan. p. 88. —

Courtemanche vs Beaupré's. } On Report of Arbitrators -

Defendts objections and Pltffs answers to be communicated in writing —

Wednesday 18th. October 1809.

Present—
all the Judges.—

Cheshire vs Jones.— } Action for hire of a farm.—

The Pltff states, that he leased his farm for four years to one Barakeil Geary, who after possessing it for a year, sublet it to the defendant.— That the sublease was made out in writing but not executed by the defendant,— That defendt. entered on the farm under a knowledge of the lease from the Pltff to Geary, and the action is now agt. Defendt. for the rent and stipulations contained in that ~~agreement~~ lease.— That Pltff has made proof of Defendants possession of the farm for two years and also of the knowledge he had of said lease between Pltff & Geary, and thereon prays Judgment.—

The defendant says, that Pltff has no right of action agt him.— That he ~~did~~ not take possession of the farm under a sub-lease from Geary, as he always refused complying with the terms of the lease from Pltff to Geary.— That defendt. is not therefore accountable to the Pltff, but to Geary for any rent he may owe for his said possession, and at all events not liable to any of the stipulations in the lease from the Pltff to Geary which he the defendt. always objected to.— That as to the rent of his two years possession, he has paid it, as appears in proof, viz. fifteen pounds to Geary, and other fifteen pounds to the Pltff by Geary's order.— and therefore if Pltff can use the right of Geary to demand the rent from the defendant, he has made sufficient proof of payment and must be discharged from this action.—

The

The Pltff replies, that the action is founded on the knowledge the defendant had of the conditions of the lease from the Pltff to Geary at the time the defendt took possession of the farm and the consequent liability to fulfil the terms of that lease

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Bernard & ux: v. Poirrier

Action for legitime of Pltff wife —

The Pltffs state that on 9th April last Jn Bte Barbary died leaving Marie Magd. Barbary, the Pltff wife as his only heir. — That on 5 Novr 1804, the said Jn Bte Barbary & his wife made a Donation to the Defendt of a certain lot of land & of all the moveable property money & effects he possessed reserving only the use thereof during his life time — to the prejudice of the right of legitime of the Marie Mag. Barbary — And therefore the Pltffs conclude that defendt be held to render an account of all the propty and effects which have come to his hands by virtue of the S. Donation that the Pltffs legitime thereon may be ascertained —

The defendt pleads that from the burdens imposed by the said deed of Donation it must be considered as a Sale of the — property by the S. Jn Bte Barbary to the Defendt — inasmuch as the annuity to be paid by the defendt was more than double the amount of the annual profits of the land and equal to the full value of the land itself & moveables given by the S. Donation. —

Ordered that the value of the land and moveables given, and also the burdens imposed by the deed of Donation be estimated at the time of making the said Deed, and also at the time of the decease of the said Jn Bte Barbary. —

Gaspé, wid & ux
v
Brunet –

Action on two promissory Notes made by Defendt –

The Defendt pleads, that one of the notes was given by him to the Plaintiffs late husband – that the Pltff has renounced to the Community that subsisted between her and her late husband whereby that Note became the property of the heirs of her said late husband, and her Suit in this respect is therefore irregular – that since the institution of the present suit the Pltff has filed an acte de partage made subsequent thereto whereby it appears that the said note has been made over to her by the said heirs – but her action ought to have been founded upon this acte de partage from which alone she can derive right to the note – but it cannot support the action in her own right, and is besides too late – As to the other note the defendant pleads prescription –

The Pltff replies that the acte de partage gives the note to the Pltff – and it would be hard to oblige her to have recourse to a new suit when it is evident that the right is in her – the only question with the Court ought to be merely as to the Costs – As to the plea of prescription pleaded by the defendt to the other note, the Pltff says, that defendt made a new undertaking to pay the note, of which she prays to be admitted to make proof –

———

Young
v
Blackwood
&
Symes Claim

On claim of Symes to be paid a dividend out of the partnership property of Cuvillier Aylwin & Harkness for a debt due to him by Cuvillier. —

The Asst objects to the claim as contrary to the principle already established by the Court that partnership property must go to pay partnership debts, and the individual property of every partner to pay the debts of such partner. —

The Claimant replies that the Creditors of the partnership are creditors of every individual partner and may compel him to pay them out of his individual property, and would be entitled to a dividend thereof with any other Creditors of such Individual partner, and it is therefore contrary to equity and good conscience not to allow the same right to the Creditors of the Individual partner against the property of the partnership to which he belongs. —

The Court dismissed the claim, considering it as a settled point that partnership property must first be applied to the payment of partnership debts before the claims of the Creditors of Individual partners can be allowed to come in. —

Cole. —
v.
Haight
&
Cole. Ext —

The arbitrators having made a new report in consequence of the Interlocutor of the the Pltff now moved for his Judgment agt the Defendant — and the defendant prayed that Judgment may given against the Garant for the same amount as demanded by Pltff with all costs. —

— —

Wurtele
v.
Rébou.
&
Rébou as Tutor
to his Children Oppt

The Plaintiff having seized a lot of ground which belonged to the ~~Community between the~~ defendant ~~and his late wife~~, the defendt in his capacity of Tutor to his minor Children opposed the Sale thereof — claiming that the same should be sold à la charge of the Customary Dower of the said children. —

The Plaintiff states, that the defendants children by claiming the Douaire Coutumier, will be entitled to one half of the lot of ground seized; and therefore the Opposition ought to have been made afin de distraire which would have brought the question of right regularly before the Court — That the Opposition afin de charge is irregular, as their claim to half of the property cannot be considered merely as a charge — and even if it were, it will be impossible to sell the lot, with the condition that the purchaser shall be bound to deliver up one half of it

it when the Defendants children shall be entitled to claim it — That the property may perhaps be susceptible of a division, in which case no charge would remain, as the half might be set aside for the Children's Dower, — so that the present opposition is irregular — cites. Gr. Cout. art. 354. Glo. 1. No 4. — That in cases where the property seized cannot be divided, the Course is, to admit the seizure as a licitation of the property and sell the whole — cites — Tit. des Criées. Gr. Cout. p. 1199. No 50. —

The Opposant answers, that the Opposition is made for a right not yet open, and which may never exist, vn^t the right of Dower — and therefore the only opposition that could be made in order to preserve the right was the Opposition afin de charge — cites. art. 249. Gr. Cout. glos. 2. No 19. — That in order to facilitate the Sale the Opposant will agree that the whole be sold and one half of the money remain in the hands of the purchaser, the interest thereof to be applied towards the discharge of the defendants debt until it shall be ascertained whether Dower will take effect or not, provided however that the property be of a nature not to be divided. —

Beaujeu
v
D'Aout. &
Ranger Opp.

On opposition for a certain quantity of Seed wheat sown on the defendants land which was sold with the Crop on it under writ of Execution —

The Pltff contends that nothing ought to be allowed to the Opposant as he sowed the land after it was seized, and did therefore at his own risk — that if anything be allowed him it ought to be without Costs —

The Oppost states that he had no knowledge of the seizure of the land, there being no Saisie reelle nor establishmt of a Commissaire to notify the same — That the land has benefited so much more by the seed sown thereon & must be presumed to have sold for so much more on that account, and the Opposant is well founded to claim that he receive out of the proceeds of the Sale the value of such benefit. —

Smith. &
v
Filer. & al.

Action on two promissory Notes made by Defendts

The Defendants allledge that the Notes were granted upon usurious considerations, and refer to the testimony adduced as a proof thereof. —

The Pltff contends that value was given for the Notes

Toucher. a
vr
Robitaille

Action to render account of certain tithes received by Defendt. to Pltffs use —

The Pltff states that he has made proof of his services as a Priest in the parish of St. François de Salles for the time stated in the declaration, and that Defendt. received the tithes from the parishioners during that period — he has also made proof of the orders of the Bishop in consequence of which he made the said services for one half of the said parish, and that the defendt. has accounted to Mr. Varin the priest who performed the same services for the other half of the said parish for the half of the tithes received by him — also that the Defendt. has received sufficient portion of the said tithes to satisfy the Plaintiffs claim. —

The Defendt persists in the defence he has heretofore made — and says, that the legal right to the tithes of the said parish during the time for which they are demanded by the Pltff. was in Mr. Marchand who was the Curé of the said parish — and although his temporary illness may have rendered it necessary for the Bishop to call in the assistance of the Pltff to perform the duties of a priest in a certain part of the said parish, yet as long as Mr Marchand was not destitué or legally deprived of his office as Curate of that parish

the

the legal right to the tithes was in him - That it was not in the power of the Bishop to remove Mr Marchand and appoint another priest to that parish at his pleasure, nor could he take away the tithes from him who had the legal right and bestow them on an assistant - The Curates in this Country are not amovibles at the will of the Bishop, nor can their rights as Curates to their tithes be affected by this order - cites. 1. Vol. Edits. p. 244. an. 1679. - That the defendant acted as the agent and attorney of Mr. Marchand in receiving the tithes in question, and he is accountable to Mr. Marchand only or to his representatives for what has been so received - That the right of the Pltff for the services performed by him, if right he has, must also be against the representatives of Mr. Marchand. -

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Hanna vs Jackson & Heirs Jackson mis en Cause

On reprise d'instance agt. the heirs of Defendt. who died since the institution of the Suit. -

Mr Stewart. for the mis en Cause, objects, that the widow of the defendt. is called to take up the Suit on behalf of her minor Children, in her capacity of natural guardian to them, which does not authorise her to defend the Suit nor to bind the said Minors by her acts. -

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130)

Mears. — }
v. }
Randall }

In action to obtain a title to certain parcels of land sold by Defendt. to Pltff —

The Plaintiff states, that by an agreement entered into between him and the Defendt. on the 11th. March 1807, it was stipulated that Defendt would transfer and convey to the Pltff one Sixth part of three certain lots of land in the Township of Hull which Defendt. had purchased from the Crown at a certain public Sale upon Condition that the Pltff should pay one Sixth part of the purchase money previous to the suing out the patent from Government for the said three lots, and should also pay his proportion of all costs and charges that might be accrued thereon. — That the Plaintiff was always ready and willing to pay the above sums of money, and has made proof by the testimony of Mr John Shuter that a sum equal to the Plaintiffs share of the said purchase money was by the Pltffs order placed to the credit of Defendants account with Shuter to which the Defendant acquiesced — Yet that Defendant obtained the patent from Government of the said three lots of ground without any intimation of his proceedings and now refuses to convey to the Pltff the Sixth part thereof according to his said agreement, although he has never made any demand from the Pltff any money, nor put him en demeure in any way, which was necessary before defendant could exclude the Pltff from the benefit of the said Agreement. —

The

The defendant pleads that his promise to convey to the Pltff one sixth part of the lands in question was made upon condition that the Pltff should fulfill his part of the agreement by paying one sixth part of the purchase money & of the other costs and charges prior to suing out the Patent – but Pltff has failed in his proof of the payment of such monies – the testimony of Shuter is inadmissible, because he is the attorney of the plaintiff, and is himself interested in the proof he makes, & besides, no verbal testimony can be received of a payment made on real property – the credit given by Shuter to the defendant in his books cannot be considered as a payment to him without his consent, and he has by his answers to the faits & articles, denied that he ever consented thereto – The offers now made by the Pltff to pay his proportion of the purchase money and charges is made too late – he knew or ought to have known that the lands were sold at public sale and the conditions under which they were sold, and ought to have come forward in time to enable the defendant to make the payment –

The Pltff in reply says, that Mr Shuter has no personal interest in the Cause and is a good witness to prove a tender of money – That defendt could have compelled the Pltff to have paid all the monies he had become bound to pay under the said agreement, but on the contrary he wished to preclude the Pltff from any share of the lands

as

as he found he had made a good bargain, and therefore proceeded to obtain the patent without notice given to the Plff. who was always ready to pay what might be demanded.

Henderson & Armour v. Diefenback

By Judgment given in this Court the 19th. April last, the Plaintiffs were dismissed from their action, the Case having been carried into Appeal, the Judgment was reversed and the defendant condemned to pay the amount of the Plaintiffs demand. — The Plff produced the record of that Judgment and moved that this Court would grant Execution thereon. —

The defendant objects, that this Court has no power to grant execution upon the Judgments of the Court of Appeals, and it would be contrary to reason that this Court should grant execution against the opinion they have given on the Case. —

The Plff replies, that it is contrary to the practice of the Court of Appeals to grant Executions upon their Judgments, as it would be liable to great inconveniencies in Case oppositions should be made thereto which must be determined in the Inferior Courts, as the Court of Appeals cannot exercise any original Jurisdiction.

Archambault vs Cormier and Corbeil.

On action to obtain an alimentary pension from the Defendants.—

The Pltff states, that on the 24 Sept. 1784, the Pltff and her late husband Jean Bte Corbeil conveyed a certain land they then possessed to one Simon Tetro dit Ducharme in consideration of a certain stipulated pension viagere.— That Ducharme conveyed the land with the same burden to Pierre & Paul Maillet.— That on 13e Dec. 1799 the Pltff and her said husband made a Cession of all the property they possessed, both moveable and immoveable, to the Defts and it was therein stipulated that in case the land they had so conveyed to the said Simon Tetro and then possessed by the said Paul Maillet & one Vergueur, should be retroceded to the said Pltff and her said husband, they the said Defendrs should be considered as the proprietors thereof and the land should become their property, in consideration of all which it was stipulated that the said defendants should "loger "coucher, nourrir, chauffer, vetir & inhumer, les soigner et "faire soigner tant en maladie qu'en santé", the Pltff and her said husband.— That a retrocession having been made of the said land the defendants under the said deed of Cession became the proprietors and entered into the possession thereof, and afterwards on 27 July 1800 sold the same to Jacques Cartier fils who thereby became expressly bound to fulfill the same stipulations towards the Pltff and her said

husband

husband as the defendants were bound to do under the aforesaid Cession of 13th Decr 1799 – and it was further stipulated between the said Jacques Cartier fils and the said defendants, that in case the said Pltff and her s[d] husband should not live with the said Jacques Cartier he should pay them annually during their lives 400th, to be diminished one half on the death of either – That the Pltff and her said husband have lived with the said Jacques Cartier fils for several years until the decease of the Plaintiffs said husband when She withdrew from his house – And as she now finds that 200th half of the sum stipulated to be paid to her by her said husband by the said Jacques Cartier fils, is insufficient to support her, she now claims by her present action that the defendants be held and bound to pay to her a sufficient rente et pension viagere equal in value to that stipulated in the deed of Cession to Tetro of the 24 Sept. 1784, or that a sufficient rente & pension should be settled by estimation of Experts and be paid to her since the time she left the house of the said Jacques Cartier fils, being about 3 months ago –

The defendants say, that the Plaintiffs action is ill founded and that she is not entitled to any rente & pension viagere such as she demands, inasmuchas they are ready and willing to comply with all the clauses and conditions contained in the Cession made to them by the Pltff and her late

late husband on 13th Decr 1799.— That as to the stipulation contained in the Sale made by the defendants to Jacques Cartier fils to pay to the Pliff and her late husband 400th during their lives and 200th to the survivor of them in case they should quit the house of the said Jacques Cartier fils, was not obligatory on the said Pliff, but left it to her option in case she chose to leave the said house that she might then claim the said sum of money in lieu of all the other clauses and conditions contained in the said deed of Cession of 13th Decr 1799, nor can the said stipulation be construed to mean that the Pliff could leave the house of the said Jacques Cartier fils when she chose and without Cause, and claim the rente et pension she now demands

The Pliff in reply says, that the defendants had no right to stipulate any allowance for her in lieu of an alimentary pension in case of her leaving the house of the said Cartier without her Consent, and that in consequence of their Sale to Cartier they have lost all right to any benefit they could have claimed under the deed of Cession of 13 Decr 1799.— That Pliff cannot be compelled to live in the house & under the power of a Stranger, and therefore had a right to leave Cartiers house when she chose.—

King's
vs.
Delery Gr.
Voyer

On certiorari

Mr Vigé on behalf of the persons suing out the writ of Certiorari, states, that Mr Delery the Gr. Voyer made a Proces verbal laying out a certain road

which was brought before the Court of Quarter Sessions for homologation, and that upon the oppositions formed thereto that Court directed and received the survey and report of a Surveyor in contradiction of the said Proces verbal, and without any other sufficient ground rejected the Proces verbal in toto whereas the said Court were bound to have confirmed and homologated the said Proces verbal as no legal cause was shewn to the Contrary — prays that this Court will set aside the Judgment of the Quarter Sessions and confirm the said Proces verbal —

It was answered by Mr Rolland on behalf of some of the parties concerned, that the Quarter Sessions had the power to reject or confirm the said Proces verbal in the whole or in part, and this Court cannot controul that power unles the Court of Qr Sessions had proceeded irregularly or given a Judgment which they had no right to do — That in the present Case

there

there was a material defect in the proces Verbal, - the Gr. Voyer not having joined to the Proces Verbal the Consent of certain persons therein referred to and essential to the validity thereof, and without which the said Court could not have legally homologated the said P. Verbal. -

Thursday 19th. October 1809. -

Judge Ogden. absent.

Henderson & Armour. v. Dieffenback } The Court were of opinion that as the Judgment of the Court of Appeals contained no order for any further proceedings before this Court, nor any directions respecting the granting an execution on the said Judgment, this Court could not interfere, nor grant any execution thereon, and therefore Pltffs took nothing by their motion. -

Beaujeu v. D'aout & Ranger Opp.t } The Court allowed the Opposants claim for the Seed wheat sown on the defendants' land, with Costs

Molloy. v Connolly.

The Court were of opinion that a reference to Arbitrators after the adduction of testimony before the Court could not be granted - and therefore Pltff took nothing by his motion. —

Dominus Rex v Dellery. —

The Court were of opinion that they had no controul over the Judgment of the Court of Quarter Sessions where they acted within the power given to them — That this Court must be considered as a Court of Errors on applications of the present kind, and all they can rectify thereon are illegal proceedings or irregularities appearing on the face of the record brought before them — Here the Sessions had the power to reject the Proces verbal and this Court cannot set aside that Judgment and confirm ~~the P.V.~~ — The Certiorari was therefore set aside, and the Proces Verbal and proceedings thereon ordered to be remitted to the Court of Quarter Sessions. —

Wurtele. —
vr
Rebou. —
&
Rebou Optt

The Court were of opinion that the Opposition on behalf of the defendants children was rightly made it being a claim upon the property to which they may be entitled but cannot yet exercise — but if it should now appear that the property seized cannot be divided, the parties interested have a right to get the whole sold, reserving the rights of the said Children to be exercised on the monies arising from such Sale — It was therefore ordered that the parties name Experts to visit the property in question and report to this Court to morrow whether it be susceptible of division or not. —

Vve Duffy.
vr
Levêque. tal

The Court this day pronounced the following Judgt. in this Cause —

La Cour ayant consideré son Jugement Interlocutoire en date du 19 Fevrier 1808, et le Compte dressé en consequence par les praticiens nommés par les parties le 19 Mars 1809 et filé le premier avril suivant, ayant aussi considéré les debats et soutenemens du dit Compte et apres avoir entendu definitivement les parties par leurs avocats et en avoir delibéré, est d'opinion que ledit Compte est juste

Dans

dans toutes les parties sur les quelles les praticiens se sont trouvés d'accord, et que sur le seul point ou ils ont differé d'opinion celle de Mr Joseph Papineau doit prevaloir, le Contrat de mariage entre la demanderesse et son defunt mari qui fixe la somme qui demeurera nature de propre à ce dernier faisant la loi des parties contractantes, et devant être interpreté strictement, en consequence cette Cour confirmant le susdit rapport et l'opinion de Mr Joseph Papineau sur l'objet en contesté entre les praticiens, et faisant droit definitivement dans la Cause, adjuge et ordonne que la Demanderesse sera comptable aux defendeurs en leur qualité d'heritiers de son defunt mari de la somme de 15,994ᵗᵗ. 15ˢ. 9½ pour leur part dans les biens de la Communauté pour leur être remboursée apres le décés de la dite Demanderesse et jusqu'à ce tems rester par hypotheque sur sa part des biens de la dite demanderesse entre les mains des adjudicataires d'iceux qui lui en payeront l'interet jusqu'à son decés, epoque du remboursement aux dits heritiers. — Et quant aux propres fictifs du mari de la demanderesse, la Cour condamne ladite demanderesse à payer aux defendeurs en leur qualité, la somme de 27,529ᵗᵗ. 7ˢ. la livre de vingt coppres faisant cours actuel de cette province £1147. 1. 1½ pour balance et interets des dits propres, avec interets de plus sur la somme de 12,737ᵗᵗ à compter du 19 Mars dernier, jusqu'à l'actuel paiement, sur laquelle somme de 27,529ᵗᵗ. 7ˢ. la demanderesse pour assurer la rente de son douaire retiendra celle de

Six

Six mille livres principal du dit douaire, laquelle somme demeurera par hypotheque sur la part des biens de la Communauté de la dite demanderesse pour être payée et remboursée apres son décés aux dits defendeurs. — Et attendu que par autre Jugement de cette Cour du 14 Juin dernier, il a eté ordonné que les heritages Communs entre la Demanderesse et son defunt mari seroient visités par Experts à l'effet de constater si les dits biens sont divisibles, ou s'il ne seroit pas plus avantageux qu'ils fussent vendûs dans leur totalité, et vû le rapport et proces verbal de Joseph Morin et Louis Gauthier, experts nommés par les parties — conformement au dit Jugement, ledit rapport en date du 23 Septembre dernier, par lequel il est constaté que les Immeubles. N°1. 2. 3. 4. 5. & 7. ne peuvent être commodement divisés, et quant à l'Immeuble N°6. les deux experts ayant differé d'opinion sur sa divisibilité, la Cour apres avoir entendû les parties, et les objections de Jn Bte Durocher, Ecuier Curateur, au dit rapport, adjuge et ordonne, sans egard aux dites objections, que les Immeubles de la Communauté de la Demanderesse avec son defunt mari mentionnés en l'etat annexé au rapport des dits Experts, excepté le Lot N°6. sur la divisibilité du quel cette Cour reserve de prononcer apres nouvelle visite des dits Experts, seront vendûs et adjugés par forme de licitation dans l'une ou l'autre branche de cette Cour, et que la part afferante aux defendeurs dans le prix des dits biens restera entre les mains des adjudicataires — jusqu'au décés de la demanderesse qui en touchera l'interet,

en

en vertu de son don mutuel, et le décés de la dite Demanderesse arrivé, sera payée et remboursée aux dits defendeurs — Tous les depens de cette action, et ceux des praticiens et Experts divisés par moitié entre la demanderesse et les defendeurs. —

Friday 20th October 1809.

Present

All the Judges.

Smith
vs
Tyler & al.

The Court gave Judgment for the Plff on the two notes, but it appearing that subsequent to the making of the notes the plff had agreed to give delay for pay+ on obtaining from Defendrs certain Silver watch, of the value of five pounds, which was illegal, and would have affected the validity of the notes if it had formed any part of the consideration for which they were made — the Court therefore directed that the watch should be delivered up to the defendrs — and that the Costs of the defendrs witnesses who were heard to prove this fact should be paid by the Plff. —

Castonguè. vs Laberge. — The Court were of opinion that the defendant ought to be admitted to make proof of the facts alledged by him in his plea. —

Surgeon vs Sessier — The Court considered that the presence of the Witnesses and the Notary at the time the Obligation was read to the defendant and when he signed the same was sufficient to render the act authentic, and therefore dismissed the Inscription de faux made by the defendant with Costs. — —

Fitzgerald vs Holt. — There being no grounds for admitting a supplementy. proof by verbal testimony, the plaintiffs motion for the same was rejected. —

Bernard vs Poirier. — Ordered that Experts be named to ascertain the value of the property given by the late Jean Bte. Barbary to the Defe— both at the time of the Donation and at the time of the decease of the said Jean Bte. Barbary, also the burdens under which the land was granted by the said Donation. —

Gaspé widow &c
v
Brunet &c

The Court dismissed the Pltffs demand for the first Note, saving her recourse, in consequence of the partage made between her and the heirs of her late husband — and admitted the parties to their proofs upon the issue raised touching the second note. —

Perlin &c
v
Beique

The Court were of opinion that the award of the Arbitrators on the former action so far concluded the rights of the parties, that no new action could be brought for the same — the Court therefore dismissed the action but without Costs to the defendant, as he might have had the benefit of the award on the former action and ought not to have consented to a discontinuance thereof. —

Trucheon.
v
Trucheon.

The Court gave Judgment for the Pltff. —

Hannah.
v
Jackson. —
Heirs Jackson
mis en cause. +

It was ordered by the Court that the widow of Defendt — do within 15 days proceed to the appointment of a tutor or tutrix to her minor children for the purpose of defending their rights in this cause, & on default of her so doing that the Pltff be authorised to do so for her. —

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Gariepy
v
Lajoie.

The Court gave Judgment for the Pltff, considering the service of the faits & articles to have been regularly made at the defendant's domicile, as he had appeared and pleaded to the action. —

Stewart
v
P. Archambault
Ch. Archambault

The Court considered the objections made by the Defr Pierre archambault to the Obligation as insufficient inasmuchas the language in which it is drawn is the language of the land and every one is supposed to know it — that it was the duty of the defendant when the Obligation was read to him to make the objections he now makes, or not to have signed the Obligation — If the Obligation were drawn in a foreign language the Court would admit the objection — As to the Plea of the defendant Charles Archambault, the court were of opinion that the mere allegation of payment without something more certain would not entitle him to a delay for proof they therefore gave Judgment for the Pltff, saving to the said Charles Archambault his recourse for the wood he alledged to have furnished to the Pltff —

Meunier, dux
v.
Guerin. ux

The Court were of opinion that as Defendant produced no order in writing for the payment of the 676th nor any receipt from the person to whom he alledged to have paid it on account of the Plaintiffs, that Defr was not entitled to a further day to make proof of such payment - the Court therefore gave Judgment for the Pltffs reserving to defendant his right for such monies as he may have paid on account of the Pltffs -

B. Cole. -
v
- Haight
& T. Cole. Gar^{t}

The Court gave Judgment for Plitf ag^{t}. Defend^{t} as demanded, with same recovery in favor of Defd^{t} against the mis en Cause. -

Chaboillez
v
Roi. - -
& Durocher
Gar^{t} - -

The Court considering that the delay given by the Garant to the defendant was given upon the Condition that the defendant should pay the Interest of the Capital from 1st May 1806 which the defendant constantly objected to, alledging that it was understood and agreed that he should pay interest only from the establishment of the new market

opposite

opposite the lot he purchased from the said Garant in the proof of which fact he hath failed, and therefore as the Conditional offers of delay made by the s^d Garant have not been accepted nor acquiesced in by the defend^t they cannot be considered as binding on the Garant alone — Judg^t for Pl^ff. the Costs on the calling in the Garant divided. —

Kees. —
v
Marchand } The Court gave time till next Term to produce a power of attorney from the Pl^ff.

Cuvillier.
v^s
Scott. — } The Court dismissed the exception pleaded by the Defend^t considering that any partner may be sued alone upon any concern or Contract of the partnership. —
see cases decided — Desrivieres v. Hall.
and Hibbison v^s Coffin. —

Raymond
v^s
Polonceau } The Opposition made by the defend^t was dismissed.
Polonceau Opp^t

Mallard v Roi. } The Pltffs motion to examine the Defendt. on faits & articles was granted. –

Cheshire v Jones. } The Court considering that the action was founded on a lease from one Geary to the defendt – which was not proved, and that the defendants possession of the farm did not render him liable to the clauses of that lease without express agreement – dismissed the Pltffs action – saving his recourse –

Mears... v Randal } The Court were of opinion that the defendant could not take advantage of the non-payment by the Plaintiff of his share of the purchase money of the lots of land in question, as the defendant had never put him en demeure, which was necessary to be done, as the obligation of paying the money by the Pltff was connected with and depended on an act to be done by the Defendant, vzt. the suing out the patent from Government for the said lots of land. – The agreement between the parties gave the Pltff a right to claim one sixth part of the land, and to deprive him of this right

required

required some interpellation on the part of the Defendt. The Court considered the proof attempted to be made by the Pltff as wholly unnecessary, as his right was sufficiently apparent by the agreement and nothing had been done to deprive him of it. — Judgment was therefore given for Pltff. —

See Poth. Obl. Nº 201. to 213. Vide

Sutherland vs Provan. — } The Court gave Judgt for the Pltff, on his giving security to repay the amount to defendt in case he should be hereafter troubled for the same. —

Sutherland vs Cuvillier. — } Same Judgment

Rollin vs Bouthillier } This Cause was argued the 16th inst. —

Viger for Pltff. — states, that the proof made by the defendant is insufficient to support his Incidental demand, that on the contrary the land in question appears to have been purchased at its

full

full value, and that there appears no ground for having alledged a lesion d'outre moitié in that purchase.

Bedard for Defendt. – admits that he has failed in his proof of lesion d'outre moitié, but says, that it was stipulated in the Obligation that in case the Pltff took the land he should give credit to the Defendt. thereon for Six thousand livres, and Defendt. contends that he has a right to obtain that Credit from Pltff on his present demand. –

The Plaintiff answers that he holds the land under an agreement subsequent to the Obligation, and that he gave the full value for the same. –

The Court – gave Judgmt. for the Pltff, there appears no ground in favor of Defendt. on his plea, either for a lesion d'outre moitié, or for a greater credit than that given him by the Pltff. –

Manson v Fraser. – The Court adjudged Defendt. to restore the tools in question, and to pay four pounds damages for the wrongful detention of them. –

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Lecuyer. —
Lefaivre. —