

February Term.

1810.

and

April Term.

1810.

2

1797/1810

220

Cases under deliberation since last Term —

De Lasausseye
v.
Burton — }
and
De lasausseye }
v.
Baroness of }
Longueuil }

The principal question raised by the pleadings in these two Causes is, whether the sale by the Sheriff under a writ of Exec. of the undivided share of the late Moses Hazen in the Seigniorie of Poleury ^{of different farms} ~~and Nonpouan~~ affected the right of Dower claimed by the Plff. — and whether Dower can attach upon any part of that share after such sale. —

According to the principles of law it is laid down that Co-heirs or Co-proprietors purchasing or acquiring the ^{undivided share} ~~rights~~ of each other in a joint property, whether by Partage, Sale, or Licitation, the purchaser is considered as the only proprietor, the same as if he had acquired the whole property without the intervention of his Co-heirs or Co-proprietors and the purchase determines the original right he had in the property the consideration he pays to his Co-heirs being the recompense he owes them by reason of his greater share in the property — and the other Co-heirs or Co-proprietors cannot by their act bind or mortgage what they may have considered as their share in the joint property —

As to Partage — see Poth. Comte. N^o 140. 141. 142. 143. 144. —

As to Sale, see Poth. Vente. N^o 643. —

As to Licitation. see. Poth. Comte. — N^o 145.

Id. — Douaire, N^o 93. — also N^o 32. N^o 26. N^o 94. —

And all other kinds of acts of same kind. see. Poth. Comte. — N^o 148. —

See also Poth. Societe. N^o 179. 180. —

It would seem a violation of the above principles to determine differently as to the sale in question —

But Plff's right to Dower on half of her husband's share in the Seigniorie of Sabrevois must be admitted —

Baroness of
Louqueuil. -
vs
Charland. -

Action for Lods & ventes. -

The Plff. claims Lods & ventes on a deed of Donation by one
Auclair to Patenaude of 16th Aug^r 1804. - £12. 14. 1

On the rescission of that Donation by the
same parties by act of 11 Sept^r 1805. - 12. 14. 1

And on Sale by Auclair to Defend^t. of the same
land by deed of 23rd Nov^r 1805. - 12. 3. 0¹/₂

£37. 11. 2¹/₂

The Defendant called in Charles Allain his vendor as his Garant -

The Garant takes fait & cause & pleads, that Defend^t. is not liable to
be sued, nor made personally responsible for Lods & ventes due by
his predecessors - that he can be sued only by action hypothecaire, before
which a discussion of the principal debtor is necessary. -

That no Lods & ventes are due on the Retrocession from Patenaude
to Auclair, as it was made by reason of his inability to pay the rente
stipulated in the deed of Donation, and further because Patenaude never
obtained possession of the land under that Donation, & therefore the
mutation was never perfected -

That Garant has paid all he owes to the Plff for Lods & ventes -

The Defend^t. pleads (plea to be filed) that he is not personally liable
for the Lods & ventes claimed by Plff. - That Defend^t. has paid all he
personally owes to Plff by reason of his purchase of the land in question

The Plff. Joins issue on the matters of law & fact pleaded by Def^t. & Garant.

The question respecting the liability of the possessor to pay the Lods & ventes
due by the pre-occupant of a land, has been determined -

The points therefore remaining to be considered in this case are

1. Whether any & what Lods & ventes were due upon the land when
the Defend^t. purchased it -
2. Whether any & what Lods & ventes are due by the Defend^t. on his own
purchase. -

On the first point. — From the proof adduced it is evident that Paton auld had a possession of the land under the Donation made to him by Allair as it appears, that he both sowed and reaped a part of the land and made up fences upon other parts of it. — The lods & ventes therefore upon that Donation are due, vizt. £12. 14. 1 — (according to the Plff's statement of the value of the articles of the pension stipulated in the said Donation), but of which no proof has been made) — As to the lods & ventes on the retrocession, it is contended that in law they are not due as the retrocession was made from the Donee's inability to pay the rent therein stipulated, and therefore the same in effect as if made in a Court of Justice. — see authorities cited. —

On 2^d Point. — The Defendant has filed a receipt for the Lods & ventes of his own purchase — also a receipt book for the rents of the land in question by which it appears that all arrears are paid up to 1808. The sufficiency of evidence is meant apply not only to the plea of Defect, but to that of the Grant also, for if the quittance in this book can be construed to extend to all dues accruing on the land as well lods & ventes as rents, then the Plff's action must fail — if on the contrary it is to be restricted to rents alone, then the Plff's claim ought to be admitted for the lods & ventes on the above Donation but not on the resiliation —

Michel Vincent, & Marie Braie
d^e. Labonté, his wife. — Plffs. —
Joseph-Louis, Michel- and
François Braie. — — —

Action of Account.

The Plffs demand that defend^{ts} brothers of the Plffs wife, do account to them for all the property and estate of the late Charles Labraie d^e. Labonté and Marie Charlotte Piedalue their father & mother now in the possession of the defendants, and of which no Inventory hath ever been made nor any account rendered to the Plffs who are entitled to $\frac{1}{4}$ in each of the said Successions. —

The Defend^{ts} plead, that they never had, nor have they now in their possession any of the property belonging to the Succession of their late father, all of which at his death was left in the possession of the s^r Marie Charlotte Piedalue their mother, who rendered an account thereof to all her children and paid each of them their share thereof, as appears by the Acte de partage of 4 Dec^r. 1804, and by which the Plffs acknowledge to have received 1360 for all their rights in the said property — As to the real estate which the Defend^{ts} now possess and which belonged to the Community that subsisted between their said father and mother, they hold the same by virtue of a deed of Cession made to them by their said father and mother on 30^t Jan^r. 1783, which was ratified and confirmed by the Plffs by their accepting and receiving the sum of 1380^t for their legitime reserved to be paid to them upon that deed — see their receipt of 8 Feb^r. 1798. — As to the Cattle & certain other goods and effects which belonged to the said late Charles Braie & Marie Piedalue, they are now the property of the defendants under the sale thereof for a valuable consideration which was made to them by their said father and mother, as appears by an acte sous seing privé, dated 29 July 1796, deposited in the office of a public Notary on 5. Aug^t. 1799, during the life time of their said father & mother — and of which cattle and effects the defend^{ts} have had the possession since the date of the said Sale. — As to the Succession of their said mother the defend^{ts} say, that they have no account to make or render thereof, as

by

by her last will and testament, dated 2^d June 1802, she devised and bequeathed all her property and estate to them the Defendants —

The Plff^s reply — Say, that after the death of their said late father the said Defendants jointly with the said Marie Piedalue had the possession of all the property of the said father, which from vaster the decease of the said Marie Piedalue remained in the sole poss. of the Defendants and of which no Inventory was ever made nor any account rendered to the Plff^s — That the Plff^s were not parties or consenting to the acts of partage of the 4th Decr. 1804, nor did they ever accept or receive the sum of 1360^{fr} from their said mother as their share in the property & succession of their said late father — That their father & mother could not make a gift of their real property as stated in the deed of Cession of 30 Jan^y. 1783, to the prejudice of the plff^s right of legitime therein, nor could the Plff^s by their acceptance of the sum of 1380^{fr} therein mentioned render that act valid, as it would be renouncing in part to the succession of their father & mother during their life time, which is wholly illegal — as to the said sum of 1380^{fr} the Plff^s agree to account for it as so much received out of their father's succession. — That by the said Deed of Cession the said late Char. Labraie & Marie Piedalue reserved to themselves as their own — property the house in which they then lived, with a stable and garden but of which the defendants at their decease took and now hold the possession — That the said Charles Braie and Marie Piedalue did not sell or give to the said Defendants any cattle or effects by the acte sous seing privé of the 29 July 1796 — such act, if ever made being wholly null and void — as no Donation, such as therein specified can be made sous seing privé. — That the Testament of the late Marie Piedalue is wholly null and void, being made by gestes & signes, and not dictated by her, as she was unable to speak at the time. —

It appears from the Exhibits filed by the defend^{ts} that on the 30th January 1783, the late Charles Braie and Marie Piedaliv his wife made a Cession to the defendants — "de tous leurs biens immobiliers qu'ils possèdent
" actuellement dans quelques endroits qu'ils se trouvent sis & situés sans
" aucune réserve ~~veca~~ in consideration of a certain alimentary pension to be annually paid them and in consideration also that the defendants should pay to each of their Sisters for their legitime in the real Estate, the sum of 1380^{fr} one half on the day of their marriage or when they came of age, the other half at the decease of the said Charles Labraie wife. — On the 8th Feb^r 1798, the Def^{ts} wife, one of the Sisters of the Defend^{ts} accepted and received the 3^d sum of 1380^{fr} reserved for her in the said deed, and jointly with her husband gave a receipt and discharge for the same — It also appears by this deed of Cession that the old people reserved their house and garden, but it was only during their life time — so that after their decease the defend^{ts} would have the same right to them as to the other property conveyed to them by the said Deed.

On this deed it may be questioned, whether sufficient words of description are used to convey any property whatever to the Defend^{ts} the general words of "tous leurs biens immobiliers" are admitted in Testaments on account of the favor in which the law holds those acts, but in all acts and deeds translatifs de propriété, it would seem that much more is necessary — see Fer. Parf. Not. 1 vol. p. 63. — who says,

"Les Notaires sont tenus par les ordonnances d'exprimer dans les
" Actes translatifs de propriété la nature des héritages qui sont aliénés —
" s'y faire mention s'ils sont tenus en fiefs &c. à peine de privation de
" leurs Offices quant aux Notaires, et de nullité des Contrats quant aux Contractans
" See also Répertoire, v^o Notaire — Sec. 4. —

But as the validity of this act has not been questioned but rather admitted by the parties, it may be considered irrelevant to take notice of it —

By the acte sous seing privé of the 29 July 1796, the said Charles Braie wife acknowledge to have sold to the Defendants — "les animaux
" inutiles à nous appartenans qui consistent en boufs, vaches, chevaux,
" meubles

"meubles, harnois, traines, charue, charette, veaux, dont le prix nous a
"été payé en argent" — In this act it is also said — "à l'égard des moutons
"et volailles, et le produit et croix d'iceux nous les donnons par ces présentes
"à Joseph &c — The execution of this act has been admitted,
and no proof has been adduced to shew fraud in it, or that the
allegations in it are untrue — it ought therefore to be taken for what it
purports to be — a Sale for a valuable consideration — As to that part
which contains a donation of the Sheep and poultry its validity may be
questioned. —

Charles Braie & Labonté died on the 2^d. Aug^t. 1800, leaving his
widow, the said Marie Piedalue in possession of all the property of the
Community — She made no Inventory thereof, but on 4th Dec^r. 1800
(not 1804 as is correctly stated by the Defend^{ts}) an acte de partage was
made by her, whereby a sum of 1360^{fr} was assigned to each of the
children of the deceased as their share in his succession — The Plffs were
present when this act was made, but they neither agreed to it, nor
signed it — It is in evidence by the plffs answers on faits & articles
that they received from their mother 1250^{fr}, but it was two months
prior to the passing of this acte de partage, and although it is not
said on what account that sum was paid, it must be presumed to be
on account of their father's succession —

On the 24th Feb^r. 1804, Marie Piedalue died — but before that
time, to wit, on 2^d. June 1802. made her last will and testament, and
thereby bequeathed all her property and estate to the defend^{ts} — The Plffs
alledge that this testament is a nullity, as it was made par gestes & signes
and have gone into proof to shew, that before, at the time, and after, the
making of the said will the said Marie Piedalue had been, and was
deprived of the use of speech by a paralytic stroke, and could articulate
only the word, "misericorde", — Some of the witnesses say, that although
she could not speak, she appeared to have her senses and to be able to attend
to the duties of her religion — but it is evident that she was not in a
situation

situation to dictate her will to the Notary at the time it was made, and upon the face of the will it is said, that it was "dicté d'une manière intelligible, tant par paroles que par gestes & signes" — and Charles Leclerc, one of the witnesses to the testament, swears positively, that he was present during the time the will was made, and that the only word the testatrix could articulate was, "misericorde", which he requested the notary to observe, and to make mention thereof in the will —

Gauthier, the notary who made the will appears to have been brought up a second time by the Defend^r after all the other testimony was closed — this is inadmissible — the testimony ought to be rejected —

The authorities of law are strong and numerous, even prior to the Ord^e of 1735, to shew, that a Testament made par gestes & signes is invalid —

See. Poth. Testament — ch. 1. art. 1. —

2. Parf. Not^e tit. Des Testamens. liv. 2. ch. 1. p. 222. —

6. vol. Diet^e des arrêts. N^o 227. p. 694. Testament par signes. Id. — v^e Paralytique. —

Semaitre sur Paris — tit. Des Testamens — p. 424 — He explains the reason of the arrêt cited by Ferrière in the 4^e vol. G. Com. on art.

1. Riccard. part. 1. ch. 3. sec. 2. p. 32. N^o 139. 140. 141. —

But the Ordinance of 1735, contains an express prohibition in this respect — see — Comment^e sur les Nouv. Ordon^{es} par Lacombe. p. 106. art. 2. with the authorities cited in the notes, referring to the old jurisprudence —

The case will therefore be reduced to this, that the Defend^rs being now in the possession of the property of their late father & mother, are accountable to the Plffs — 1st For such parts of their father's estate as are not included in the deed of Cession of 30 Jan^y. 1783 & Sale of 29 July 1796, except the Shop & poultry ment^e in that sale of 9th an acct. ought also to be rendered — 2^d For all the property left by their mother as her will cannot be considered valid in law. —

Antoine Foucher }
Ignace Robitaille } action to render account of tithes rec^d. by Def^t. to use of Pl^{ff}.

Louis Brunelle }
Joseph Faqnan } action for salaire as a notary—

Jonathan Hagar }
Wm^r Henderson }

M^r Gill & Todd }
Napier. C. Burton } Action en bonnage.—

Thursday 1st Febr'y. 1810

Present
All the Judges.

Gray
v
Scott

Plff moves for execution upon the Judgment of the Court of the Appeals, adjoining to the Plff the amount of his demands -

The Defend^t objects that he has had no notice of the present application, to which he is entitled, that he may examine whether the Judgment of the Court of Appeals warrants further proceedings in this Court, without of. It cannot be granted - cites Case of Henderson & Armour. v. Duffenback. last term -

The Plff replies that he is entitled to his execution as a matter of right - that the Judgt. in appeals expressly states that further proceedings be had thereon in this Court -

The Court were of opinion that the Plff is entitled to his execution as a matter of course. & as the Judgt. in appeal directs ~~ordered~~ that the Record be transmitted to this Court for such further proceedings as to Justice shall appear - ordered that execution shall issue. -

Friday 2^d February 1810,

Present.

— All the Judges. —

Porter
v
Marston
&
Jones

Stuart for Jones moves to file an Excep. per. to the Pleffs action upon circumstances which have happened since the plea filed; namely, his having acquired the land in question by a Sheriff title. —

The Pleff answers that Defend^t. had a knowledge of the fact he now alleges. — and besides is now too late according to the rules of practice. —

Hawley
v
Trusdell
&
Perkins
Tens Saisi

The Garnishee having declared that he had nothing in his hands belonging to the Defend^t. the Pleff moved to examine the Garnishee upon certain Interrogatories to shew that he had received certain property from the Defend^t. and had the same in his possession at the time of the attachment in order to protect the same from the Creditors of the Defend^t. — if he alleges he is entitled to put to the party either as a Garnishee or obtain a Judgment thereon — or he can make him a party in the Suit & put the same questions by way of facts & articles. — cites — 1 Piquan. p. 656 — Poth. prov. ew. 12^e. edit. p. 367. —

The Garnishee objects to the questions to say the Pleff is not entitled to put any Interrogatory to him purporting to prove him guilty of a fraud as proposed by Pleff. —

Saturday 3^d Febr^y. 1810

Present

All the Judges.

Hawley
Lousdell
Perkins. T. Sain

The Court were of opinion that ~~the~~ ^{the} Garquies was not bound to answer to the Interrogatories proposed without making ^{him} the ~~Garquies~~ a party to the suit -

Burton
Rice

hearing on merits of Excepⁿ under testimony adduced to prove the identity of the timber under 2^d action for damages - same wood ^{attached} as former action of Phelps. -

Def^t. says if Plff can support this action, he will be paid twice - no person can have but one remedy for the same right. -

1 Com. Detinue & Trespass - p. 63.

Plff could have full indemnity on act. de reuind^o. -

If other wood had been cut by Rice than above ment^d. in suit of Phelps & may have not been attached, full remedy for that wood under the action of Reuindication - If more cut - if not as cert^d. that they were oak trees - Rep. v^o Reuindication - p. 625. -

Rollend for Plff.

Same number & quality of trees sh^d. have been shown to have been attached on a former suit - not proved - Plff can have only what he has attached on the former suit - the damage done by cutting that wood & cutting other wood to get at it - Soil damaged -

Plff can recover only of Phelps what has been attached - not
damages for cutts wood - If two prosec^t for same thing - y^t. Court
ought to surpend to see if Plff is entitled to a recovery on the
former Suit -

Phelps a wit[?] - objection as competent - swears that Rice was his
servant directed by his order - no guarantee in trespass -

Sol. Gen^l Phelps intended to support Rice in the license he gave him.
This action for damage to the Soil, cutting other wood besides the
timber ment^d in the Suit of Phelps - Defend^t. built a house on
Plff. lands to carry on his work. - this also a sep. trespass, for
w^hch there can be no recourse on action of Phelps -

Stewart for Defd^t replies - that Plff could have had & can
have a suff. recourse in his action of Phelps - no additional injury
since the issuing out the action of Reverend^e no new cutting -

Lee
in
Senter

admission of arbitration -
nothing said -

Cuyler
in
Mansfield

action on Sale - mil. dec. -

Whitfield
in
Corse

action for goods sold & deliv^d - means on Ex^h - on agreement
that if goods not sold on 1st May next. they sh^d not be p^d for -

Richardson
Dustin -

In revendication - for wood cut down by Defend^r. on
Suff^y of Beauharnois -

Defend^r. pleads a permission to cut wood from the agent
of the Seigneur - Plff^t alleges that Def^r. has not complied wth
any of the Conditions of that permission - wood cut neither
for fire wood nor fencing, but for sale -

Defend^r. That Def^r. had legal poss. of land by act of Plff^t
& Plff^t action ought therefore to have had action for breach of Servant
and Revendication.

Monday 5th Feby. 1810.

Present

All the Judges.

Whitfield
Corse

Vincent.

Braie

Interloc.

McGill & Good

Burton

Interacts to verify line accord to title. marks out diff: line between lands, & boundaries wth authority & time when & under g^h planted -

=

Toucher

Robitaille

Dismissed - same reason as Marchant -

=

Whitfield

Corse

Exception dismissed - goes to the merits - & depends upon proof to be made - opinion given before the Jury -

=

~~Mr~~

~~Burton~~

Porter

Marston

Jones

Plea of Esopⁿ of Jones admitted to be filed -

Auldjo sal

n

Motion to join

}

Pangman

Beechman

action on p^y note

Def^t. excepts. that it was by error he gave the note - it was cutting wood on Cliff - shews now by title that land where the wood was cut was on land of one Bourgeois whose permission he had to cut down wood then - if g^h fact be proved to be admitted to the proof -

Holland for Plff.

That note should be considered as a transaction upon the
suit of h. was commenced agt. him for damage to a much greater
extent to wit £100. - & cannot now be admitted to contest it -
Plff. witnesses may be now decd -

Bedard. That error vitales, every act even if authentic, & Defd^t
ought to be admitted to prove it - that ~~he~~^{it} was also craini that note
was given. -

Hagar
Anderson

Plff^t moved for publicⁿ of Com. Rog. -

Plff^t object. that there is no proof of the signature & seals
on the Commission - Practice in Ch^l requires proof that it came from the
hands of the Comis^s & in same state as he received it - without it the Com^s may be made up in
Montreal -

Defd^t came from England by Capt. of Ship, who delivered
it at Quebec to some agent of Plff^s who forwarded it to
Montreal - Duplicate also sent by way of Hats - by
private hand, whose affidavit cannot be obtained -

Lascelles & Boimier
Robertson

rule VIII for new Trial -

Bedard for Plff^s.

* Verdict contrary to law & evidence adduced -
proof of contract & part delivery of goods -

1. Because Justice was not rendered to the Plff by the d^o. verdict. -
2. Because the verdict is contrary to law & evidence adduced in the Cause
3. Because the d^o. verdict is contrary to the direction of the Court -

Defd^t Sol. P. - Plff states that goods were sold to him, soon afterwards
taken out of his possession by voie de fait - plff not-guilty -
proof - no contract wth Plff^s. but with Lascelles only -

2 Verdict contrary to evidence. —

The evidence is positive to say, that there was ~~no~~ sale, as there was no delivery of the goods, merely an agreement for the sale of them — no Invoice delivered, goods sent to Lachine but under control of Dept^{ts} — ^{It is} usual on sale of goods to Merchants in Upper Country — The store keeper at Lachine had orders from Dept^{ts} not to deliver the goods to Plffs without his orders — storage charged to Dept^{ts} —

The action mistaken, being in voce de fact, which has not been made out in proof, it ought to have been for the delivery of the goods under the agreement — a subsequent new agreement whereby former was waived — on point of damages Plff made no proof —

That Justice has been done between the parties, although it may have been somewhat contrary to the directions of the Court — ~~the~~ discretion of ~~the~~ Court in granting new trials ought to be consistent with Justice — and as Plffs have suffered no damages, no new trial ought to be granted.

Pass for Plff. in reply — —

The risk has been proved to be on the purchaser from the time they leave the merchants store in Montreal — risk constitutes property —

Plffs surprised by mode of pleading — as under it he has adduced testimony to prove a new agreement waiving the fact ^{of} ought to have been pleaded — Plffs not prepared to rebut this testimony — and Jury may have founded their verdict upon this evidence — the testimony of Hoyle goes to say, that Plffs has also said it was the same thing whether he got them or not —

all applications for new trials are made to the discretion of the Court & this

Damages proved - Plff. hired men & a bateau - goods might
have been sold to an advantage - injury to their credit by not
getting the goods -

~~Bunder~~
~~Drescher~~
~~Breguet mis~~
~~en Carter~~

Lawrence & Dayton
Blackwood & al
Claimants. -

Plff. had Indgt. agt. Defendts. to
render acct. of Individual property
of Austin Cuvillier, which they held as Trustees to his Estate
This account being rendered, the Court ordered the property in the hands
of the said Trustees to be sold ~~in order~~ that the proceeds might be applied to
the payment of Plff. debt - In consequence of this sale, the 2^d Defendts.
as Trustees on behalf of cert. an Creditors of Cuvillier Aylewin & Harkness, Cuvillier
& Aylewin, make an opposition to delivery of the monies arising from this sale praying to
be paid as proportionally thereon for the amount of the claims of the 2^d Creditors
Ross. Trustees claim on behalf of Creditors of Cuvillier
Aylewin & Co. & Cuvillier & Aylewin, upon the principle
that the Individuals of a partnership are ^{severally} bound for the
whole of the debts of the partnership -

Sweetmain
v
Hamilton

on rule nisi why report ^{of arbitrator} sh. not be sent back to them to
amend it as by affidavit of one of them it appears they
have made a mistake in it. —

Ogden for Dfd.

Report for £10. in favor of Plff. q^d. will entitle Dfd^r from
his arrest under the Capias — Arbitrator cannot give cert. q^d
belong solely to Court — Arakouante v. Chief of Indian, court
refused to admit the affidavits of arbitrators to show that they were
of opinion to grant cert. to Plff. —

King
v
Servieux

Y upon Certiorari —

Rolland for Justice. applies that writ be quashed as irregularly
sued out —

1. No suff^t grounds stated for granting it. — ^{no grounds} ~~nothing~~ laid
before Judge who granted the writ.

2. — ^{notice ought to be} ^{given} ^{to the Justice of the applic^r for the}
Certiorari — ^{no proof} ^{of service of notice made} ^{by affidavit} ^{of this} laid before the Judge —

3. Writ not allowed by the Judge, signed
only by the Prothy — & tested in name of the Ch. Just.

4. By 5. 10^m ch. 11. requires names of parties suing
out writ to be indorsed on it — q^d has not been done —

Ogden for. on In Bth Labelle —

1. Reasons stated verbally before the Judge

2. 6 days notice given to the Justice - Bailiff return return of service thereof equal to affidavit of an individual. -

3. ~~Salk. 150.~~ v. Certiorari. Comyns. Fiat signed by Justice granting writ -

4. No Stat. directing

George. of Council. Hawkins pleas Crown.

2. Term. Rip. Rep. v. Eaton. - grounds for granting writ must be stated

Hand. Proc. p. 34. 6 days notice & affid. of service - applic. within 6 months -

Names of parties not endorsed - Hand. Proc. App. N. 15 - form -

Symes
Sutherland
N. Robertson

action for goods sold to partnership of P. Robertson & Co.
Question now goes whether P. R. has an action against Robertson,
P. R. & N. R. as Co-partners -

The testimony shows that a partnership did exist between
P. & N. R. - In fact - there was no partsh. between them, but
the question is how far a secret dissolution of a p. - can
affect third persons -

A partnership once constituted when dissolved must be publicly
notified - French & English law same - diff. in F. law. from
N. P. registration of articles - 2 Exp. 776 - partic. not. to persons
dealing w. p. -

2 Cowp. 449. public 1. Exp. 371. Godfrey v. Turnbull & McCawley -

Dissolution of partnership not notorious nor publicly known as
Mr M^cGill & Mr Richardson carrying considerable com. concerns
here appear not to have known it until very lately -

Ross for N. Robertson -

No law of this Country requires notification of dissolution of
a partnership in any Gazette -

Poth. Soc. N^o 149. & seq. & in N^o 157. - in fine - parties giving
credit should inform themselves to whom they are giving credit -
after a partnership is dissolved in fact - as M^cGill did -

P. dissolved by act before a Notary, equally well known
as that the Jo. - was contracted. since y^e time never interfered
in the business of P. - nor known but as a Creditor thereof. -
all creditors of P. R & Co. have recognized N. R. as a Creditor -

Objects to testimony of Cuillier as interested, the seller of
the article -

Domat. tit. Societ^e. book. 1. p. 89. Sec. 4. - parties may
dissolve their Jo. - when they please -

Bedard of counsel for N. Robertson -

Pleff ought to have proved that when he sold goods then exported
a Jo. between P. & N. R. - no knowledge shewn that existed
such partnership is an act before Chab. N^o 17. - but it also
proves that it was dissolved in 1801. - That according to articles
this P. w^d have lasted only to 1806. - The title of Firm does not
name N. R. -

That when a p. is dissolved by agreement before the expiration of term ship. notice is necessary - but when the whole lapse of term expires no notice is necessary & people ought to inform themselves before trusting the P. - see Poth. Soc. N. 157. -

The proof that Plff knew that A. R. was a P. - can only be by articles of agreement of^t an dissolved -

Cuvillier is mandataire of Plff, & bound in certain obligations towards him - he may be responsible for the Rum sold in case he knew that the P. of P. & N. K. was dissolved -

Sol. Gen^l for Curator -

That some testimony which Plff has adduced to shew the P.

Stuart for Plff;

Plff made suff^t proof of the existence of P. - by persons who had a knowledge of it before the transaction in question

Public notification of the existence of a p. - requisite by the Fr. Law. - & if a creditor did not advert to the time of dissolution it was his own fault - as stated by Poth. Soc. N. 157. -

Cuvillier has no interest - the mere agent doing the business -
By Law a good witness. -
~~Poth. Soc. 157~~

Thursday 8th Febr. 1810.

Judge Osden absent.

Sweetmain.
v.
Hamilton. } Just. for £10. - wth Costs as under £20.

Burton
v.
Rice. } Exception dismissed. cost reserved - as party states that he
could not sooner move for a Junction of the Causes so as to prevent
a double recovery by Plff. -

Pangman
v.
Beaudouin } Def^d. admitted to make proof of his allegations -

Longueuil
v.
Cheneau
&
Allain Gar. } Action dismissed for want of proof of value of articles in
the Donation from Allain to Patenaude. -

Hagar.
v.
Henderson. } Commission Rog^{re} admitted & publication ordered -

The King.
v.
Hervieux &
al. } The writ of Certiorari - quashed - on 2 points -
1 no affidavit of service of notice on the parties
2 no grounds alleged for granting the writ. -
No costs -

Lascelles & Boismie
v
Robertson. - and
Lutherland mis in law

New trial granted -

Parker Gerrard & Co.
vs
Jas. A. McGuffey

quest. as to op. & a con. Kap^r -

Berthelot
v
Cicault
&
E. Contre

action for goods sold - for a pt note -

Lacroix. states that he deliv^d 4 pieces of fine to Plff. which
will reduce his action below £10. & therefore costs sh^d be

awardingly -

Ross. in reply - no suff^t proof of delivery wood -

Lutherland
Civ. in
vs
Vanoughnet

action for goods sold -

Plff contends that figure in receipt has been changed
from 1804 to 1806 - testimony of Hoyle & Reeves to show
diff^t mode of making figure 6 - & inability to write at time -
same sum credited to Def^t in books in 1804 -

Stuart - proof relied on to prove change in figure insufficient -
entry in R.'s book can be no evidence for him - proof ought to
adduced that the money was really pd. in 1804. & Def^t says that
he did not then pay any money -

Molloy. -
Counolly. -

{ action for goods sold -

Sol. Gen^l for Plff. contends that proof is sufficient to support demand
relies on exhibits filed by Defd^t. June 1805. but - In Plff

Stuart. Plff has made no proof - & he cannot be called on his
oath by the Court, it being a Commercial action wherein such
proof is inadmissible -

Pangman
Duprat

{ action for Damages for carrying his grain to be ground
at a different mill than Plff's canal mill -

Ross for Plff. states that plff has made proof of his demand

2 Vol Edt. p. 131. - cited 20 Jun 1667.

" - - - - - p. 147. -

" - - - - - p. 290 - - - - - July 1728 -

Lacroix - says, there is a contrariety of proof respects the sufficiency
of the mill - reference ought to be made to Experts -
No title filed to show Defd^t to go to Plff's mill -

Shuter.

Bouthillier
Cuvillier & al. -

Stuart for Plff.

Randall's order for delivery of Potash directed to ^{Delink} Grant his clerk
~~Grant~~ by representⁿ of Cuvillier put them into his boat, who sent
them to Inspection Store -

Potash under mark of Plff - sent by Grant to Inspection Store
as Plff property -

Rolland for Defd^t. says he rec^d the potash from Mr Grant of
Lebanon under direction of being property of Cuvillier & Co -
claims his costs -

Ross for Inter's party -

No ground for action de Reverberation as Plff never had poss. of the
ashes - no proof of this poss. in the Cause - an order by
Randall to deliver potash to Cuvillier who first got the possession
of them. Randall has a right to stop goods in transitu. -

Stuart. in reply. -

The evidence says that ashes were to be sent to the Inspection
Store under Randall's orders for Plff. -

~~Beck~~
~~Dennis~~

Friday 9 Feb. 1810

Judge Gray absent

Berthelot }
Chaulet }
E Contra. }
=

Judgt. on principal demand for £10.13.8 - the incidental
demand dismissed. the whole exp. Costs. -

Sutherland }
Cuvillier }
van Koughnot. }
=

The Receipt filed by Defend^t. set aside as falsified. -
* Judgt. for Plff.

Shuter }
Bouthillier }
Cuvillier }
=

Judgt. orders potash to be deliv^d up to Plff

Lasaussee
Burlou -

Ludt

Beek
Genau

Action of Trover.

Stuart for Plff

Plff, ^{Public Officer} made a seizure of 3 chests tea wth a sleigh & horses, Defo's servant carried them off, after they had been taken to Custom House -

Beaudin & Spie, Vts. prove that Plff was possessed of the tea - and Defo. is liable for the act of his servant -

Absolute property not necessary to support trover - ^{qualified} property
sufft. cites - 2 Esp. 577.

Doll^d - action not as a custom H. officer - but in his individual name and for his own property -

Comy. Dig. who has the property can bring the action -

The possess. is as a Custom H. Officer, not as an Individual. - Not ascertained that there was tea in the boxes, nor that the tea came from the States. -

Motion to reject test. of Bourdeau, the person driving the Defo's Sleigh
Ross. - Interested to convict Defend. to exonerate himself. - same objections -

Stuart. in reply - If plff had the poss. he is entitled to the action of trover - public character ^{of Plff} not in question - always that he served it as a Custom house officer - In action de voce de fait - the Defo. cannot contest the authority under wh^{ch} the party held the property -

Bourdeau, the agent or serv^t. of the party must be a good witness, often from the vicinity of the thing -

Jewett
r
Farrar
+
Hagar Intervz

Georgers for Interv party vob^d: a rule on Plff to show cause why articles seized sh^d. not be deliv^d up to him upon giving security to deliver it back to answer order of this Court -

Sole Genl. states goods seized in the press^s of Dep^t: & it is not the right of an Interv party to get them, they ought to remain in the hands of Justice until the question be settled in whom the property is -

Saturday 10 Feby. 1810

Judge Ogden. absent.

Hagar.
" Henderson.

facts & cont. admitted after return to a Com. Rog, subsequent to the closing of exhibits for review. -

Boutwell
" Laundry.

Plff. moves that ex. filed by Dep^t: be taken off the files, counts an objection to the process, and not made by motion for the return day. -

Dep^t: objects that the rules of prac. respect^s ex^{hibits}. does not apply to objections, to the De^{cl}:. -

Cuge
" Bouc.

act. for articles of alim^t: pension. -

Plff. states that by the test. of her late husband the defend^t: as his legatee is charged to pay the articles demanded, & he has always cont^d: to till 1807. -

Dep^t: by Stuart. no ^{off} proof that defend^t: took possession of the property bequeathed to him by late - Bouc. -

Coutelee, supra
M^r. Latenarde

Actions for Cens & rentes.

Plff. Zuesmel. Defd^r. alleges that he owes Cens only since 1802, but he has been in possessⁿ. since 1797. refers to proof. —

Wiger for Defd^r - no proof of poss. before 1802 - will owe only £7.10 therefore ought not to pay costs —

Plff in reply, proved that land was conveyed in 1797 & this by Dec^r of Commission - therefore defend^r. owes the Cens as holding the land

Coutelee
Cotté

Action for exhib. of titles & for payment of Cens & rentes -

Plff. Defd^r. has pleaded delay. - not proved -

Defd^r. Bunder - action already instituted for same object of exhib. of titles in June last of^t Defd^r. satisfied - title of^t. demanded with title of an emplacement - Defd^r. ought to pay costs as in super. Court -

Plff replies - that from value of emplacement.

Poitras
Southallin

Defd^r. mo. to to change date, in hund^r. demand & file a paper which by mistake he has not filed -

Plff - Issue complet - cause ready for hearing -

Monday 12 Febr. 1810

Judge Ogden abs^t.

Bouthillier Landry	} Motion rejected -
Augé. " Bouc.	} Just.
Poitra. Bouthillier	} Motion rejected -
Coutelée Côté	} Just. £8. 4. 6 - cost of Sup ^r Court -
Molloy Connolly	} Arbitr. named - then upon exam ⁿ arbitr. of proofs adduc ^d -
Panzman Duprat.	} Experts -
Dufresne Vinet.	} Just. for £4. 8 ann ^y -
Houtelle Patenaude	} Just. £10. 5. 1

Whitfield
Corse.

action of assump. for goods sold. - £401. 19. 6.

1. Plea - not to be p^d for if not sold on 1st May -

J^r Badgley - That in Aug. 1808 a parcel of goods q^d came up in
Crafft from L. had been lodged in W^hl. Store, & q^d were deliv^d to Defend^t
cont^d in 1st aut. £123. 13 - Def^t gave his note for £63. 13 - q^d

J^r Ross. That ^{in Aug. 1808} paints on board a vessel were lodged in yard of
Mr ^{Cookham, when W^hl^r Lewis} Badgley were deliv^d to some Carter or carrier & the goods q^d were taken
by Def^t -

I heard no conversⁿ between Plff & Def^t ^{x²} respectg. these goods -

Robert Frost. In Sept. 1809 applied for pay^t of aut. now exhibited, £401. 19. 6
Def^t acknowledged to have received the articles ment^d in that aut. -

as to second aut. Defend^t s^d he had rec^d them from Plff or Commission. -

Defence

J^r Badgley. proves signature of Plff to Invoice filed by Def^t - no. 3. -

Joshua Wharton. knows Plff. went wth him in ^{fall} 1808 to Britain, then s^d he
meant to return to y^e County next Spring - Arrived in Scotland in Feb. -

Lewis Lymen. In 1808 saw P. in Quebec. when s^d he w^d use every endeavour
to be at Quebec on 1st May ensuing - looks at Invoice M^r S. says, that it is
always better to get such articles early in the Spring - but sales may be made at all
times of the year - ~~has sold his paints at 25/-~~ that June & July are months when
more sales are made of such articles, than later in the year -

Nahum Mower printer. On 29 Sept. 1808 The Defend^r. put an advertisement into his paper the Canadian Comment for the sale of sundry articles of paint, of
was cont^d. 20 weeks -

Arthur Webster. deals in glass & paint sometimes - sales of those articles better in Spring
than later in the year - if he ordered such goods in Spring & did not get
them till fall he sh^d. consider it optional in him to take them or not
being entitled to a damage for not receiving them as ordered -

Fran. St. Pierre. Heard Plff. press Def^r. to buy the paints, & Def^r. refused to do, saying
it is too much - that paints were afterwards came to Def^r. shop, with
heard Def^r. & another person say, that part of them were on Commission

M^r. Lamoureux. demeure chez le Def^r. depuis 3 ans - Qu'il sait que le Def^r. a laissé une
grande quantité de peinture chez le Def^r. en 1808 mais ne peut dire
si le Def^r. les a achetés ou si le Def^r. les a laissés à commiss^{ion} - Qu'il
y a une grande quantité de ces articles qui sont encore chez le Def^r
inconnus. -

John Grant. experiment on stone coloured lead - found no lead in it -

M^r. Polley - in habit of taking goods on com.

Rob^t. ^{well} Corse. Clerk to Def^r. States quantity of articles remaining on hand of
Def^r.

Rob^t. Frost prove that Def^r. ^{in Sept. 1809} refused to receive goods imported that year -

Pliff makes two bills of parcels - one of goods really sold - one of goods alleged to be
given on commission -

Whitfield does not say in the order given that order shall be forwarded in Spring,
but his subseqt. letter shows the agreement to that effect in Sept. 1807. -

But the Plea is bad - does not withhold the sale - but merely that goods should
not be paid for. -

Evidence attempted to show goods as fraud -

Charge. That goods appear to have been sold on fair of papers. My plea
not to be paid for if not sold 1. May, means only not to be paid for before that
time - The damage on Pliff. undertaking to import goods may be
assumed by Jury, although little testimony to this effect has been laid before
the Jury -

Verdict. for Pliff. on both demands. -

Simpson
Beach
Lilly, Cur' -

on rule to show cause why award sh^d. not to be homologated
nothing sh^d.

~~Max
Dupre~~

~~Pliff complains of error in the award of arbiters~~

~~Sutherland~~

~~Def^t. objects to legality of some interrogatories as being leading questions
- - - - - and wishes that Com. be taken from them. - - - - -~~

~~J. & A. McGill~~

Wednesday

Tuesday 13th Febr. 1810.

Ch. Just. absent

Anne Starke, Ex parte -

A rule to ~~show cause why~~ ^{an} ~~an~~ ^{on} Jos. Whelan, a
 rule moved for ~~a writ of prohibition~~ ^{and certain} ~~against~~ ^{justice} named
 under St. 27. Ev. for hearing ~~three~~ ^{of small} ~~of small~~ ^{causes} upon two ~~sub~~ ^{now}
 pending before them, ^{at suit of John Odell} ~~ast.~~ ^{ast.} said Starke as Administratrix, whereas the
 Stat. gives power only ~~where~~ ^{where} transactions between the persons concerned
 in these transactions, & not their representatives -

Wednesday 14 Febr. 1810

about Ch. Justice

Ex parte - Anne Starke.

The Court granted the rule on the Justice as demanded

Thursday 15th Febr. 1810.

Present,

All the Judges.

Malleard
or
Roi -

Motion by Plff, that Defend^t. do appear to complete his
 answers to certain Interrog^s - on default thereof that they be taken
 as confessed. -

Sarault
Marmier
Garant

on report -

Objected - that Experts sh^d have been sworn - subject agreed that operate without being sworn - no notice of their operations since - but report made without notice -

Bedard for Plff.

consent of parties that Exp. should operate without oath made subsequent to the visit - report made in consequence

The Court on examining the consent of the parties considered the report to have been regularly made. -

Rolland for Gar^t Boudhuller -

The Court has not decided by intention as to mitoyennete of the wall running to rear facade of Experts - report state there is no mitoyennete - reasons stated same as in Plff's declⁿ of^t the Court could have decided without them - no marks of mit. - title contrary - no momentum to Boudhuller, as Exp. has built up an allonge of^t he never warranted -

Saroux for M^{rs} Noel of Boudhuller can be discharged from the guarantee his clients ought to be so -

Ross for Def^t

That the wall between the houses has served as mitoyen for 70 years. all the titles to the houses shew it - If the wall is mitoyen, the prolongation of it must be so also of the Def^t's erected a small building - The Experts have not stated facts sufficiently but made a deduction of the titles of the parties - House bought with four walls, & right of mit. & ought to have recourse over exp. his vendors in case Plff prevails -

Bedard for Plff. the whole wall in quest. belongs to Plff & is not mitoyen

interim - Plff. house first built - sold by B. without reserve of
mit of ¹/₂ is a servitude, it cannot now be considered as such -
 That wall is wholly on ground sold by B. to Calvi - Dept. chimney
 built aft. but not in the wall - marks of non mit.

Foretier.
 Cheint
 &
 Steury Gat.
 Trineque
 2
~~Maclou~~
 Marois

act. in Dec. 1^{er} hyp. -
 Dep. says. poss. only 2 ans. of leud q¹ he is ready to dequiesce with
 Cots. - Dept. has p. the baillien du fond & stands in his shoes prop. to
 Plff.
 Poth. Hy. ch. 2. Sec. 5.
 Gp. 2 vol. tit. 5. p. 36.
 Dept. is ready to quit upon being reimbursed q¹ he has p. to the
baillien du fond.

Plff. cites case Mullerje & Munde, where dept. had p. money
 Dept. has sold an aspect of the land on q¹ he has got money

~~Dubalme
 v.
 Cosnier
 Boucher
 L. Sain
 Guerante hnt~~

~~Plff. seized in hands of Boucher - Guerante claims privilege
 on the money seized - says there are more monies in hands
 of L. S. than pay Guerante & Plff. also. & therefore prays
 Judge~~

Cross.

Pass for Part.

King
v
Moudelet
Cust. -
Seminary oppo

On demand of Seminary for Dep. rights -
Sol. Guil.

Leveque. tit. in 1795. not produced - 28.12.6 lts on it ought to be deducted
~~10 Sept. 1796 - 25 - given up~~

Reaume
Sanguinet
Harr

Action for pension - Dep. dead - heirs called
Rom. sup. noth to show that pension called in are heirs of Dep.

Brunel
Fagnan

Rule to show cause why a certain paper filed by Plff as an
account should not be rejected from the records as not
being conformable to order of Court as an account -

Boston
Harte

Rule to show cause why action shd not be dismissed by reason of default
of summons for Lobs -

George for Plff. That Dep. has no right to demand a process of lts
and bring the action - and by law not bound to show it to Dep.
Poth. Mandat 127.

Dep. court decided that a person residing out of County shall be duly represented

Robt
Suzant
Parents

Wife for Dep't. copies to report.

Ross for Parents - do

Bidard for Plff.

Impress not to reckoned, as they are purely
rent valued at £20 - now valued at £40 -
rent valued on principal of Interest of charge on house, wh. were
over rated - under to prove this fact by mouth of Experts -

Ross for Parents. states that proceedings regular, deposit made after
visit of the house -

Friday 16: Febr 1810

Present

All the Judges. -

Wm Babcock
Ph. Rinter sal

on trial before Sp. Jury. for damages - for false imprisonment -

proves notice to Dep't. of the present action -

Robt. Millar.

lives at St. Armand. knows Plff. & Defd. was at St Armand on 15 June last
when Plff was arrested by one ^{Th?} Piper & another J. Powell -

Objected this testimony not admissible - action is for trespass
is wrong - where the original act is lawful, but attended with consequential
damages, case and not trespass ought to be brought - where the last
acts by information from another, case only can be brot.

Idla. Com. -

Com. Dig. p. 392.

2 Term Rep.

inform -

4. Term Rep. - 78: 663

Stewart: no dist. whether the Justice acts personally, or by his officer. —

Gale - no action on this case -

1 T. R. 633. — } Conviction cannot be tried by this action —
Salk. 395. — }

Objection over ruled - Plff was carried prisoner before Def^d - cannot distinctly say what happened - was put in Irons & kept in that state all night & next day was appointed one of the Sleepers - this done by order of the Justice - next day set off to come to Montreal in custody of two persons, but not then bound nor in Irons -

Fran. Hoggie knows parties - saw plff brought a pris. before Def^d.

Def^d asked if Plff told him that he made Bank bills & had such in his possⁿ -

Chas. Cooper Keeper of the House of Cor. where the Plff was in his custody on the 17 June last under a warrant signed by Def^d into house for - stave there about two months - did some labor as other pris^m & under an order of Judge was removed from his confinement -

John Reed Deputy Jst for the P^{ro} - produced writ of Hab. Cor. in consequence of ^{sets 15 July last} an order was made on the Cust^d for his discharge -

John Delisle Clerk to J. R. ^{on 17 July} rec^d. an order from Just. Order to write to Def^d to forward papers respecting conviction of Plff - On 20th same month - saw Mr Renter to goⁿ he told him the contents of letter he sent, with it on his return he forwarded the paper - letter deliv^d. to Mr G - who then had an opportunity to forward it - D. S. held in July last -

P -

James Relyea Has known Platt for 4 years - In June last agreed to buy a farm of Whit^r for 500 dol. to be pd. in a way on shares - part of pay. to be made on day he was arrested - saw a way on & horses in pass. of Platt before that time - had agreed also to build a house for Whit^r -

George Willis Has had dealings wth Platt in this Province two years ago - Knows that Platt has horses belons to him - goods also, of g^d. Platt has purchased - Knows that he mowed hay last year on his own - Has deposited money wth him to make a nail machine & thus let have a horse on that acct -

John Martin Knows Platt for 3 years - during g^d. time he has liv^d in St Armand & Dunham - sold good tinware & had horses in his possession & considered as a man having property - shares at a time on way on 50 dolls - seen notes for debt due him to amt of 2000 \$ - & Cheat in 1808. heard Jonas Abbott say that Platt had made his escape there from a writ g^d. had issued wth him for making Bank bills, but if he were returned, he w^d. send him to the House of Correction -
That Platt's general character was good -

Knows no means for Platt had to make 2000 \$, but working

Perry Gardner Knows Platt nearly 2 years - lived at Capt. Martin's, worked for him - bore a good general character - ~~the~~ ⁱⁿ years ago last fall heard Abbott say he w^d. send him to House of Correction -

John Fay Knows Platt nearly a year in this province - heard some people give him a good character others & had -

D. Green - prosecuted a note for Plff at. one Loretta Williams - the Court
then Plff closed his evidence

Objection to
validity of deposition

1. Complaint of Griffin Reynolds at. Plff. that he obt^d his living in an illegal manner -
2. Complaint of T. Piper - at. Plff sother for an assault - & on a suspicion at Plff of making bank bills -
3. ~~Complaint~~ of warrant to search house of house of Manders. with Constable's return -
4. Examination of Babcock -
5. ~~Complaint~~ ^{deposition} of John Power
6. Conviction of Plff as a rogue & vagabond by Plff -

Turner Wm

Knows Plff some 4 years - knows no other means he has of making money than making counterfeit bills - & he bot. one of his horses wth those bills - It is generally s^d that ten were, waitcoat part. & horse given in ex. for such bills - and to carry arms about with him - That counterfeit bills of United States are in circulation in that Country -

Plff gave for reason that he carried a pistol, that in case any person molested him he might defend himself - & that he heard a report of danger of being carried over the lines & bot to sustain there for making these counterfeit bills -

Leonard Freeman. Has known Plff for 2 1/2 years, he had no fixed residence - never worked much - Told wit^h he made counterfeit bills - seen him assist in making them requests of wit^h to pass bills for him, the sh^d ~~have~~ ^{own} ^{sent} ^{to} ^{help} him a present - Told wit^h he had got his horses by selling bills - wished it sh^d not be known that he passed bills as it might injure his Suit wth Defend^t - Saw Plff load a pistol of! he carried about with him -

Jonathⁿ. W. Phelps Has known P. about 3 years - no fix^d. place of residence during that time - general report that he made counterfeit bills. - Hee^d he w^d. take the oath of allegiance & enroll himself in the militia, say^g. he was afraid of being compl^d. of as a vagabond. so that that w^d. prevent it - offered a handsome reward to wh^os if he would sign bank bills - altho^g that Mr Carpenter a good penman who used to sign bills had gone away - practice of making bills numerous in the Country. -

Does not know that P. ever pass^d any^g. bills - considered punctual to his Contracts -

Elijah Kemp. Has known P. 3 years - in St. Armand. Saw^d at Wite about 3 months - told Wite that he had made Count. bills, & w^d. make them openly in defiance of all auth^{ty} - House of Runabout Mandes called a bad house - Last Summer there was a meeting of counterfeiters there. -

Has had a quarrel wth. P., but bears him no grudge & all will

Fran^{co}. Hoyle Was at house of Mandes on 13 June last - that a number of persons to number of 7 or 8 resort there & it is s^d. they carry on business of fabricating bank bills of U. S. -

John W. Merryfield. Knows P. 2 or 3 years - about a year ago last aut^{umn}. or Sept. he proposed to give a silver watch to write for him half a day for him, & he declined - that he understood that he meant to sign bills for him - P. character that was a man who pass^d counterfeit bills -

2. H. ch. 13. Sec. 20 -

Dev. Rep 55-6

} Justice acting from good motives

Verdict for Def^t

Whitfield
v
Corse
&
Contra

Motion for New trial, on grounds,

- 1 verdict contrary to direction of Court.
- 2 contrary to Justice of Law -

That direction of Court was to give damages to Def^t. on
the incidental demands - and it is evident that the verdict
is contrary to the Justice of the case, as from the Invoice
& undertaking of the Pl^{ff} to furnish the goods & his failure
therein, a certain damage must have resulted to the Def^t -
the act of Pl^{ff}, by saying that the goods sh^d. not be paid
for on 1st alley if disposed of ought to be taken up him -
& could only require from Def^t. exp^{ts} for the disposal of it
which he used - ^{some} articles of no value -

Saturday 17th Febr. 1810.

Present,
All the Judges.

Desrosiers
Bealpis.

Price of butcher's stall -

Plff claims reimbursement of money p^d for

Def^t. no guarantee in this case - Sale not of soil, but of right in bench -
not bound for trouble occas^d by Magistrate under the law -

vult. 92

Power of legislature equal to power of Province art 9th. no guarantee
art 47. ch. 7. art. 11. cete. Poth. Vente. N^o. 92. -

Compensation under law to Prop^{rs} for their stalls -

Lacroix. in reply. - Def^t. knew he had no right to sell, & cannot profet
thence - Vente. N^o. 86 - it was a fraud on him sell bench to Plff. as he
knew he could not hold it wth the right of Magistrate -
vente. 183. 184. 2. Argou. ch. 2. 384. Def^t. bound to warranty, & bound
to return the price -

Dorion
Caron

action on obligation -

Lacroix - Plff's debt is clear. Def^t. sets up an incidental demand
which is not clear - prays Jud^g. to demand in chief, resorts to procedure
in chief demand -

Rolland. Def^t. pleads pay^t to principal demand - upon which there
must be a day for proof before final hearing -

gustin

Court inclins to think that a day should be fixed for hearing

Sanguinet
v
Barbeau -

action for lods & ventes - & exhibition of titles. -
Def^t. pleads that he has expl^d his titles - that he is not bound to
pay the amount of the lods & ventes demanded. -

Desautels.
v
Vinet. -

action for rente & pension -
Plff by Ross - states that her right is made out by papers & proofs -
Beleard for Def^t. Def^t. bound to pay rent in the house on land -
Plff lives in another parish - must put Def^t. in demeure - not done
no suff^t. proof of any demand. - action now for money to preclude
Def^t. from paying articles in kind - Plff ought to acc^t. to Def^t. for
500^{rs}. q^t. Plff agreed to pay him if he did not sell the land, & this
in consideration of an offer made to him to purchase same -
Plff in reply - says there was a suff^t. demand - & no tender - when a
day is fixed for pay^t - no demand is necessary, & after that day elapses
the Plff has a right to claim value of articles. -

Daw
v
Hall

assumpsit for work -
Stuart for Plff. states that Plff demand is made out by proof
the incidental demand not proved - money & board - no proof
Ogden for Def^t. - must demand proved, &

Martel
Dupré

on report of Arbitrators -

Plff objects - Bal^{ce} p^{er} M^og. diff^{er} of a balance
difference as to 7 barrels of beer -

Woolrich -
M^oFarlane

action on promissory Note -

Plff prescribes ans^{er} that there is interruption -

Def^{er}

Courville.
Fissicau

action de lésion d'outré moitié -

Plff. moves for experts to ascertain value of land -

Def^{er}. objects to experts - importance of case, the previous opinion of Expi^{er}
obtained -

Martin
Scott

action on 2 promissory Notes -

Plff states that Def^{er}. has sworn that he has paid one of
the Notes - but has not answered positively as to the other -

Def^{er}. - that 2 notes given for same sum -

Bender
Durocher
Breunet
ms. en blanc

rule art Gardien to show cause

182
Bedard for Gardien - That he ought to be called into Court by writ & is not bound to answer on this rule - has a right to have his defence in writing - to make ⁱⁿ ⁱⁿ ⁱⁿ demand for fees ^{of} he cannot do on this rule - That he is bound to answer - says that he was discharged by law - when more than 2 months after oppⁿ ^{in a year after seizure} ^{discussio} ^{Publ. Proc. Civ. p. 182} cannot be bound to represent effects without being ^{for} charges of keeping them ^{of} accords to bailliff of this Court amounts to £82. -

Pleff. Gardien becomes an officer of the Court by signing P. Verbal of seizure & garde. -
Opposition not decided - suppose it had been decided 1808 -

Sup. lv. 4. vol. 1. p. 624 des Saines Mobiliaries - or art. 172 Cout. l. Pigeon p. 640.

That 15 days before expⁿ of the 2 months, viz. 10 Nov. the bailliff made a demand on the gardien to deliver up the effects, when he said he had no effects in his hands -

Gardⁿ sommation dated in June 1809 -

Jewett.
Farrar.
Stagar.

On opposition of Stagar -

Sol. Gen. objects to oppⁿ as no delivery of articles to oppⁿ -
articles seized in Dep^t's possessⁿ -

Oppⁿ says that was a trud^e faute. agreed that Dep^t. should have possessⁿ -

Briset
Briset

Ob. 758.

action on Obligation. - Rolland vs Plff

Plff says that Def: ought not to be admitted to prove fact alleged
wth the pay^t. of monies of Def: acknowledges that Plff pd for him -
Def: cannot be admitted to set up such a plea as his own act -
Par. Ob. No 758 -

Georgier. That oblig: is for debt pd. & which Plff had agreed to pay
for Def: Def: alleges that Plff never pd those monies, & he ought
to be bound to prove it -

Monday 19 february 1810

Present
all the Judges

Courville
Lischaun

Cont admitted parties to proofs -

Bender.
Durocher
Breunet

Plff discharged - Guardian not bound as such after
expiration of a year - if Guardian rule nisi w^d have been
admitted -

Powers
Savoy

~~a day given to ex. Plff on facts early.~~

Jewett
Farrar } opp. dismissed - no delivery -
Hays }

Moolrich
McFarland } Parties admitted to proof

Tunst
Valois } action dismissed -

Mellard
Roi - } motion rejected to bring up Sept. to answer over -

Briset
Briset } proof ordered -

Barnes
Dawson } day to 1st June to ex. P.

Martin
Scott } dismissed

Desautel
Vinet } List for delivery of rem's articles -

Fringue.

Cheris

Jurat returns. right of prof. to Def^t. for money p^d to the baillies
on the Sale -

Whitfield

Corse -

Rule for new trial discharged -

Auldys

Gillespie

Wether -

Case joined. -

Symes.

Sutherland

L. N. Robinson

Judgt -

April Term 1810

Monday 2. April 1810

Present
all the Judges.

Gillespie
Yeoward
Stewart &
Fisher Gar-

On Pleff. mo. that Stewart sh^d deliver up a note of hand in his poss. belonging to Defend^t as representing the Estate of Peter Grant -

Stewart objects to regularity of proceeding as there can be only a *saime* to stop the money in the hands of the debtor, & not the note, ^{or any paper or document} which is the property of the Creditor - note to a 3^d person -

Ross for Pleff. that seizure is regular - note may be seized as well as well as the money - cites Alex^r & Jas. Robertson v Cartougue & Dunlop. & Arakouanti. Term Lauri. 1758 -

Tuesday 3^d April 1810.

Present,
All the Judges.

There was no business before the Court

Wednesday 4th April. -

Present,
All the Judges. -

Robitaille. -
Marchand
& Contra

Defnd: moved to ex. Plff on facts & arb. after the Report of the arbitrators was made returned into Court -

Plff. objected, that there can be no such ex. after report made. -

J. J. cites case of Charb. v. Patignon determined Jan 1809. in q. a similar motion was granted -

McDonald
Lecuyer -

action for deed of sale.

J. J. says, that there are arrears due to the Seigneur on the land upon a certificate of Mr. Lothbiniere, the Seigneur, whose signature is admitted that such arrears were due on the land - Plff ought to be held to produce the quitance of the Seign. -

Plff - no proof of claim - a certificate is no proof -

Murray.
Wales -

action for recovery of lods & ventes -

Ogden - lods & ventes are due to Seign. at time, when they became due
cite - Cond. Not. p. 174 - p. 184 - 185. -

Ross for Def.

Pliff is not shown not the Seign. at the time of the Sale - no proof
that he was Seign. the Sale to him of the Seignory by P. Murray is no
proof that he ever had poss. under that deed - The person entitled to
the cess is the only person to claim the lods & ventes -

That defend. did not take poss. under the Sale of the land
made to him - no period fixed by the testimony of defend. possession
only sometime since 1806 q. might have long after Pliff ceased to be
Seign.

Sale in question ought to be assimilated to a partage, being
a share of a mill sold to Def. by W. Ware who was prop^r of a
Paper mill - & this Sale included not merely the mill, but also
all the moveables attached to it, upon q. no lods & ventes are due
the amt. of these moveables ought to be estimated by Experts -

Ogden -

Def. was not a partner at any time in the mill so as to
assimilate the Sale to him to a partage -

Def. has not pleaded specially that Pliff was not in possession
of the Seign. - q. he ought to have done, to entitle him to lods & ventes -

That it is sufficient that a deed of sale was made to create
lods & ventes,

Thursday 5th April 1810.
Present
All the Judges.

Monday 9th April 1810
Judge Paul absent

Breunel
Fagnan -

On question as to reunion of this Cause with that instituted by the widow of Fagnan as Ex^{te} of the last will & Testament of the late Sr Lapierre -

Plff. objects, that action is of Def^d. personally, & not as Ex^{te} -

Bedard for Def^d's party - Has an interest in the cause to show that Plff rec^d. many sums of money for which he has not accounted, & has acted fraudulently in concealing them -

Benton -
Phelps -

Action of Enticement & cutting wood on Plff^s Seigneur -

Sol. Gen^l. for Plff.

Plff^s Seigneurie granted to him with condition à la charge de conserver & faire conserver le bois propre pour la construction de ~~maisons~~ ^{maisons aux} - this is four in Sabrevois, right is to King to enter & take the wood propre - The Def^ds justify that they hold the authority of the Crown for cutting the wood, & that the wood they have cut is that reserved in the deeds of Con^{tr} - No agreement filed nor contract, whereby any wood is to be cut down - Licence of Cartwright for cutting the timber is the only paper & is upon that he can now speak, licence of itself no suff^t. as it refers to the Contract 9th is not filed - The reserve in the concession goes only that

that the Seigneur shall keep & preserve the wood, but gives no right to enter and cut down that wood without the leave or permission of the prop^r & Defend^t has not complied with the terms of the licence as to marks & bolts put, no notice given to the prop^r - no survey of the wood called on to mark the wood as ought to have been done.

Richardson
Sticket
Loves
Case
King -

Same points in contest -
Open for Pleff. Def^d was not shown suff^t to entitle him to further evidence
reservation is only a charge to keep the timber,

Grants by the Crown favorably construed for the Subject, etc. Domat.
the intention by reser^v timber is to take it upon giving a value for it - then
further to be considered from the words of the Grant where it is, that
the King shall take all necessary fire wood, but not to pay for it -
reser^v wood, does not give the right of cutting of them - Survey required
to assist in marking the wood -

4 Com. 163

Stuart for Def^t - action, even in revendication, not trespass -
the only question whether the plea, states suff^t matter to entitle them
to make a proof - reservation is specifically made for the wood taken -
the wood reserved never became property of grantee, & therefore could be
no indemnification of g^t. never was the property of grantee - 4 Com. Dig.
p. 163. - Bois de chauffage not to be p^d for, this necessary, as this kind of wood
had not been reserved but was the property of the Grantee -

Holland in reply -

The person in poss. as Pleff, is entitled to action en revendication, -
Poth. poss. N^o 108

Powers
vs
Savage -

} action for part^t. of a draft drawn by Deft^r -
Gale for Deft^r -

Deft^r held a promissory note of Plff. the draft was to be indorsed on it
now demands that money sh^d. be repaid to him - instead of demanding
that such money sh^d. be indorsed on the note -

Plff. p^r. 27. more than amt. of draft in order to charge same
to Deft^r. g^t. cannot be admitted. Plff. fals. a Lint. Deft^r. obt. of him
showing a further deventure -

Salk. 394
4. Com. 2133.

28. 9. 9
21. 15.
6 14. 9

Rolland for Plff.

proceedings show a diff^r reference from that set up by Deft^r -
Lint. obt. by Deft^r. filed by Plff. cannot be taken advantage of Deft^r
to make a set off agt Plff. -

9. 18. 2 Lint
6. 14. 9. Indent
16. 12. 11

Storm & Co
vs
Powers -

} action on a promissory note -
Rolland for Deft^r -

No power of att^r warrants action - only one witness to prove note
Plff. not necessary to prove power, unless specially excepted to -

Tuesday 10th April 1810

Judge Panet. absent

Cartier.

^v
Cheval.

^v
Caravan.

opp^t -

On opposition of Caravan. -

Wige - for oppos. Claim founded on a deed of Sale & on the
hypothèque accrued thereon upon the Defd^t. land sold
Ross. for Plff. - objects, that opp^t. ought to be held to discuss the
property specially hypothecated to him before coming aft. the
other property under the general mortgage -

Paschal, ^{vs}

^m
Petit -

action ex vendito. -

Beaubien for Dfd^t. Plff. owed a rente. out of the Community
in q^t. they sold their rights to the Defd^t. by stipulation each party
were to pay their respective debts in the Com^m. -

Ross. The right of ~~Plff.~~ ^{Dfd^t} became confused by purchase as she
became a debtor for what the Community owed to her - besides she
retained the land upon q^t. the pension was to be p^d - & sold it afterwards
to another person -

Mallard

^v
Roi. -

action to obtain a title from Dfd^t. to a lot of land sold
to by him to Plff.

Ross for Plff. proof suff^t. of a sale before the Court. consent
P^réseau being perfected in all material points, price, chose, & consent
objected that there ought to have been a deed to constitute a Sale

but this is not necessary unless where expressly stip. a sale verbally made is suff^t Poth. Vent. n^o 33 -

Sale was perfect, def^t. needed from it the ought to give suff^t reasons for refusing to execute the sale, he has given none in his answers on the facts & articles, & ought therefore to be condemn^d. The J^{udg} of the Court ought to be considered as a J^{udg}. in case he refuse to execute a title to Pl^{ff}. Poth. 479. At all events the Ct. ought to condemn Def^t. to ex. a title, & thereby leave the Pl^{ff}. action in damages in case of Def^t's refusal.

Rolland for Def^t

There can be no verbal consent of sale of a real Estate, & the authority cited from Pothier n^o 33 does not apply -

Pl^{ff}. sets forth 4 diff^t conditions on w^h the sale was made - w^h is
p^{ar}amis a deed of sale - for 618 £ - that the ^{Def^t} contract ^{of purchase} sh^d. be quittance - and
ensaisiné - nothing of this appears in Def^t's answers on facts & art. -

The consent between them was never perfected -

There can be no sale w^out Contract when it was agreed that such Contract sh^d. be executed - Poth. Obl. n^o 11. - Parties may break off the sale at any time before the Notary signs the deed of sale, before the perfection of the agreement -

Arige for Def^t - Pl^{ff} has made no proof of an agreement for the sale -
Lepetit 2 cent. ch. 46. agreement broken off after parties had signed but not the
Notary - there may be many reasons for change of opinion - 1. Parf. Not.
p^{ar} l. 5. ch. 1. -

Ross - Def^t. gave up his titles to Pl^{ff}. for purpose of getting a title
execute

executed, that title was half made out, and all the parties consenting the Defend: broke off the agreement without giving any cause or reason for it - q^d. he ought to have been done - as Def^d. could not legally break off his agreement without being liable to damages -

Lussier
Choquette
Sanguinet
Gart.

Plff moves for hom. of Reps. of Surveyors, and as it appears that Plff is deprived of a certain lot of ground q^d. had been sold to him by Gart - that Experts may be named to ascertain the value of such land -

Rolland for Gart - Where a whole Sect^r. is sold accords to certain extent & limits of q^d. the Plff as^d. to be in possession - no indemⁿ - a certain lot will be held in value instead of being in fact - that the report cannot be hom. as the lot of land in question is not ascertained -

Pseauvren for Plff. The grants sold according to certain limits - within which the land claimed by Def^d. is included -

Burton
Phelps
others -

Interloc for proofs.

Requette
M. An. Valle

Wednesday 11 April 1810.

Present
All the Judges.

Saraut
v
Marmier
±
Garants.

Interlocut^s for proof & not satisfied with the Report of
the Experts - & from circumstance of Plff not having
filed certain papers due of the house he now occupies -

Thursday 12th April 1810.

Present
All the Judges.

Requête de
Marie An. Lavallée

} upon petition of Marie An. Vallée to set aside the appoint^t
of Hyacinthe Aimond as Tutor to her children, & to proceed to
another appointment. - Petitioner complains that she has been
deprived of her right to be Tutor to her children without sufficient cause
by irregular appointment of Hyacinthe Aimond -

Rolland. The relations have found the mother incompetent to be
Tutor from her dissipation & want of care of her property, & of the
interests of the minors -

Houllou
v
Tessier d'ay
E^t Contra

} action on a promiss^o note - ^{55.10} & for goods sold. &c.
Lacroix. - Def^t pleads non-assumpt. & sets up. Inad^t. demand -
The Plff. has not made proof of his demand - no proof of a signature to
the note - Def^t not able to write - note not identified - Cadieux settl^d their acc^t
by mutual consent, -

Sol. Genl. for. Plff, replies - that Defd's wife has written her name & the proof is suff^t. that she acknowledged having made that note - The statement of acct. made by Cadieux is wrong, made upon supposⁿ that the note was included in other acct. produced by the parties, contradicts this by his own but if I show that note was given long before & upon a prior settlement of acct.

Charbon
v
Menard

Action on Deed of Sale. -

Dom. l. 3. tit. 5
Sec. 1. Som. 4.

Reaubien for Plff - only quest. as to interest on principal now due - certain terms of pay^t. without interest, but interest is claimed from expiration of those terms, as it is upon property naturally producing an interest -

For. Interest. when a delay is given to pay, no int. due unless expressly stipulated that Defd^r ~~was~~ ^{ought to have been} put in demerue. Lacombe. v. Interest - even in case of sale of lands -

Starke
v
Taylor -

action was Indorse of Note - maker -

Rolland for Defd^r - No suff^t proof of signature to note or Indorsement - Defd^r's proof shows Plff. acknowledged that he had no claim whatever as Defd^r settlement of acct. made in presence of Odell & wife - The note in question is a forgery - Goods furnished by Defd^r he acknowledged to have been furnished prior to this settlement of acct.

Gale for Plff. proof sufficient. -

Monday 16th April 1810th

Present,
All the Judges.

Lascelles & Boismer

Sutherland
Cur.

On action for damages for non delivery of goods on Contract.
On trial by special Jury.

D^r. Sutherland. ex^o. on facts & articles by consent - says, that in fall of year 1807. P. Robertson told him that he had agreed to sell goods to Plff^s Ant^s, Lascelles, but on reflecting on the great loss he had suffered by Plff^s. brothers the preceding year, he had ^{determined not to deliver the goods &} ~~advised~~ ^{returned} the goods back from Lachine where they had been sent in consequence of s^d. agreement - Never s^d. that he had sent the goods to Lachine at the risk & account of Plff^s. or either of them - Has no knowledge of the keys of the trunks or of peltries ment^d. in the Interrogatories - Has all books of acc^t. of late P. Robertson in his possession. That in one of them there is an entry, ^{14 Aug^r 1807} ~~Ant^s~~ Lascelles, ~~Dr^t~~ P. Robertson & Co - To goods amount^s. to £915. 18. 8^d at the bottom of the acc^t. is written in the same hand, "not delivered". That the goods therein ment^d. correspond with the list of articles annexed to the facts & articles. - That by Alt^r. Lachine book he sees it ment^d. that the greater part of the goods were forwarded to Lachine in bales marked A. B. but it is not s^d. for whom -

Fran^s. Ducharme, ment^d. at Detroit, having been on point of leaving the Province his deposition taken before one of the Judges was read - stat^s. that he purchased in fall 1807 goods of one Patterson ^{at Detroit} at 75% C^t. advance ready money, on wh^{ch}. he made at profit in selling them at Detroit. - That Plff^s could have sold the goods stated in the statement now shewn, to good advantage at Detroit. -

Jos. Woyer clk to one Godfrey Mecht at Detroit - his depos. read in same manner
That in 1807 one Pliff carried on ^{trade} business as Cps. & was business
that goods are bought at Detroit at 75¢ of Ct. on St. Louis cut, g. is considered
a very money price, & such goods are sold by retail to advantage - that
Pliff could have sold the goods they bet. of Dept. to a profit on the American
Country - & in the Indian Country - That Pliff. battian arrived from
Montreat in safety in 1807.

Rosseler Hoyle. That in 1807 was clk to Dept. P. R. - That Pliff Laselle was at
Dept. store that year to buy goods, & that P. R. laid aside a certain quantity
of goods for him - Says book now shown is the Invoice book of late
P. R. - That the entry in that book under 14 Aug. 1807 contains the
Invoice of the goods which P. R. had agreed to sell to Pliff Laselle, amounting
to £915. 16. 8. some of them made up in bales, & some in trunks, the bales
were marked A. L. B. - That prior to 1807 P. R. had sold goods for
several years to brothers of Laselle, which were packed up in bales & trunks
in some manner as those packed up for Pliff & this came only the mark
was diff. - That none of the goods so made up went to Lachine to Pliff
brothers were never taken back - That ^{greater} part of the goods so sold to
Pliff. was sent to Lachine - That the day before the trunks were sent
to Lachine Ant. Laselle came to the store & at his request the keys of those
trunks wth the goods packed in them were delivered to him - the value
of the goods in those trunks might be about £170 St. on g. 100¢ of Ct
advance was added - Understood from Pliff. that he was to forward
peltries to P. R. & Co. to be sent to England & there sold on his acct -
That the cartage of the goods to Lachine is charged to the buyer of the
goods - That in ^{part} 1807 Mr Berthelot came to Dept. store to
acquaint him that Pliff. had sent a quantity of peltries to him which
he was charged to deliver to Dept. to forward to England on his acct -

which D^r. refused to accept - That he heard D^r. say, that he had agreed to sell him goods, but upon reflection he must decline to deliver them - This was after part of the goods had been forwarded to Lachine & after the keys of the trunks had been delivered to Pl^{ff}. Lascelles - That Lascelles said to D^r. if you do not deliver them I shall not have to pay for them.

Pl^{ff}. Lascelles never meant he had a portion of name of Boismin but gave it to be understood that they were for himself - no copy of known deliv^r to Pl^{ff}. Did not consider the delivery of the keys of the trunks to be the delivery of the goods therein - but considered him at the time that Lascelles was the proprietor of the goods - & he delivered the key without any orders from D^r. without thinking there could be any difficulty about them - Knows that D^r. sent orders to Mr Grant the Storekeeper at Lachine to receive & keep the goods sent them to his the D^r's orders - Carters were hired by D^r. - & the goods were considered to be under the control of D^r. until they were delivered at Lachine - The goods were never entered in the Waste books. & he never considers the sale complete till they be entered there -

Wm Reeves. was a Clk to D^r. in 1807. - saw Pl^{ff}. at his store ^{at} in 1807 & knows that goods were laid aside for him & put in bales under his mark - That he was sent by D^r. ^{my thought from words} to different stores in Montreal to exchange certain pieces of cloth & other articles in order to make up Pl^{ff}'s assortment - That at that time did ^{the}

The chief part of Dept^s business -

That he understood that the goods were put aside for Lasalle personally
& not for a Partnership -

Thos. Finckley, Carter. That in Augt. 1807. he was employed by D^o. Clarke to cart 3
~~loose~~ ^{loose} ~~several~~ packages of merchandises to Lachine, contained in bales. -

John Grant, Storekeeper at Lachine - That in Augt. 1807. he rec^d about
73 or 14 bales & 5 or 6 cases of goods ^{being all 21 packages} from Dept^s. to be put into
his stores at Lachine ^{& kept till further orders} - That about begin^g of Sept. Ant. Lasalle
claimed these goods as marked in his name under letters A L B -
that he refused to deliver, as he had rec^d them to be detained till further orders. -
That he came a 2^d time with a batteau in order take the goods -
& asked for them a 2^d time, when he made same answer - That
he has resided for many years at Lachine & has no knowledge that
goods sent in that manner under mark had been carried back to
Montreal -

When Lasalle came with his batteau there were some goods in it, & he
does not think that there was suff^t. room in it to have taken all the goods

Geo. Watt merchant in Montreal - recollects that in Augt. 1807. Wm. Reeve came
to his store accompanied wth Pliff Lasalle, to barter some articles of
goods, wth Watt -

If goods are sent by a merchant to another person to be held liable
to the order of such merchant, he considers such goods to be under the
control of such merchant as if in his own possession -

Sam^l Dumas merch. in Montreal. - That ^{from} 1807 he did business wth Pluff Lascelles. - That he has at diff^t times sold goods to persons living at Detroit - That he considers that from the moment goods left his store they were at the risk of the purchaser -

Fran^s Toupin. That in 1806 & 1807. he was at Detroit and knows that the Pluff were then partners and in good credit - That he has a knowledge that Lascelles bought a Bateau to carry his goods he purchased from D^{ts}. in 1807 to Detroit - he also hired men for this purpose & they were to leave Montreal about 1st Sept^r. That it rarely happens that boats for Detroit leave Lachine after 1st Sept^r. as they are generally about 40 days in their passage & after this period the lakes are more dangerous - That Pluff's bateau arrived with but few goods - That D^{ts}. refused to deliver the goods to Mr L - hunt his credit in Montreal -

Pre^s Morisseau That in 1807. Lascelles hired him as conductor of his bateau from Lachine to Detroit - that he agreed to take up a bateau loaded wth goods, having six men within the usual number for that purpose - That he ~~set out~~ ^{arrived} about first of Sept^r at Lachine - That he waited two days at Lachine in expectation of getting goods to load the bateau, which Mr Lascelles had demanded of Mr Grant & which he refused - That on the third day they were obliged to set out with a few articles in the bateau, & arrived safe at Detroit -

Protest made by Pluff as^t. Defend^t. of his refusal to deliver the goods & of the peltries which were offered to be deliv^d. to D^{ts}. in execution of the agreement for sale of goods, dated 9th Oct^r 1807 -

Defence.-

R. Hoyle

1 Exp. p. 167.

2d. p. 053. 4

Being asked if Plff did not give up his bargain for the goods & make a new agreement. we Def^r - Objected - This is not pleaded & cannot be proved - Def^r is entitled to every equitable defence under plea of non-assumpsit - Ct over-ruled objection - That about 5 or 6 days after the goods had been made up & sent to Lachine & the keys delivered to the Plff Lascelles - he came to Def^r house, ~~to hear~~ Def^r told him that upon reflection he had determined not to deliver the goods very well Mr R - if you do not give me the goods I shall not have to pay for them, or words to that effect - I hope however you will let me have some blanket coats for my winter coats to which Mr R agreed & they were delivered accordingly - That Plff ~~seemed~~ ~~satisfied~~ at not having rec^d the goods -

Wm Reeves.

That some days after the goods had been sent to Lachine the Plff Lascelles came to Def^r house, - that Wt. does not know what passed in the room where Mr R - was, but upon his coming into the store, ^{with Mr Hoyle} where the coats was ~~at Mr Hoyle~~ the Plff's, Mr R. seems to ^{mistakenly} ~~said~~ me, but if he will not let me have the goods it is the same thing to me, I shall not to have to pay for them or words to that effect -

The Sol Genl. states in defence. 1st That Def^r made no agreement with Partnership of Lascelles & Boismin - but with Lascelle alone & therefore action is irregular -

2. The Plff^s have mistaken their action, by instituting one action for a Trespass, & taking away out of possessⁿ of Plff's goods, whereas they

were not delivered - the delivery of the keys an unauthorized act of the
Defnd^r clerk - & deliv^d merely for safe carriage to Lachine -

3. The Plff^s have proved no damages -

The Court charged the Jury, that the laying aside the goods &
packing them up in bales under the mark of the Plff^s was a
delivery thereof to the Plff^s, and the Def^d could not therefore withhold
them by any order respecting their delivery at Lachine -

Tuesday 17th April, 1810.

At Inst. Order abst.

Lascelles Boismin
v
Robertson

The Jury returned a verdict for the Plff^s £50 - damages

Montgomery Dal
Evers. Exrs. Exrs.
vs
J^r Brown claimt

831

on mo. of Brown to be admitted to his sermt. suppletorie
Beauchemin for Exrs - says claimt. has made no proof whatever
of his demand, except the price of the articles sold, & that the
aut. is in his hand writing & that he keeps no clerk - there is no room
for the sermt. supplet^o Poth. obl. M 831. -

Redeared for claimt. The claimt. always makes the entries in his books
of the drugs he sells, he keeps no clerk.

Pangman. }
Beaudouin } action on promy Note -

Beard for Defd. pleads, that he never made the note - the proof of his having made the note insufficient. The note bears mark of Defd. who cannot read or write - his acknowledgment of that paper cannot be proved by witnesses if above 100th as such proof is verbal and cannot bind the party - it must be an acte autentique to carry proof of such acknowledgment -

66. N. 724.

That even the note were suff^y proved, contends it is without consideration for cutting wood - & proof is, that the wood was upon the land of one Courgeon, who lives in another Seignory -

Rolland for Plff - The note is suff^y proved - That the Defend. having been prosecuted for damages in cutting down wood on the Plff Seignory and acquiesced in the fact & agreed to pay damages to the amount of £30 he ought to show that he was in error that the wood was not on the land of the Plff. if he has not done -

Rouillard. }
Pangman } action for damages

Rolland for Defd. - sets up an incidental demand for £30 for damages done by Plff while in his employment -

Beard for Plff. Defd. cannot set up such an Incidental Demand he may plead it in justification, but not otherwise -

Loedel
v
Sanford

On question whether Plff. ought to have an equal portion of the
dibs. p^o. than as Mrs Sanford has received from the Curators, or
whether a dividend of the monies in the hands of the Garnishes,
sh^d be made according to the sums respectively due to the parties
at the time of issuing out the Jailer's writ -

Plff. alleges that Mrs Sanford's mar. cont. ought to have been insinuated
as the annuity therein reserved to her in lieu of place of Dower, is wholly
diff^t. from dower ~~would be~~

Def^t. Insinuation of Contract is necessary only when something more
is given to the woman than dower -

~~Wassab
v
Rea~~

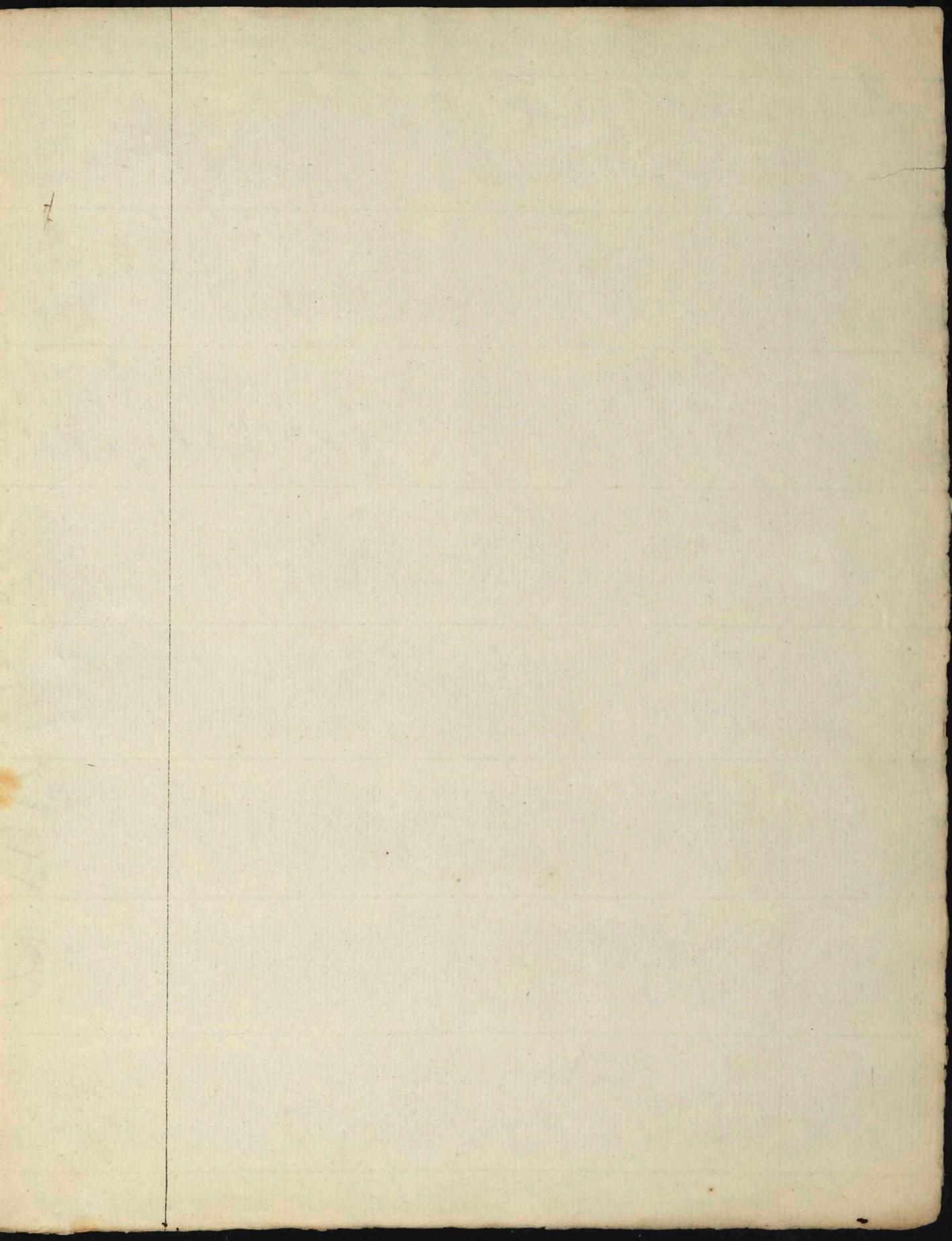
Panet
v
Coterell } damages for breakings, Plff. Carole -

Cheeseman
v
Farrar

action on a promissory Note -
only question is as to form -

Myers
v
Mondelet
Cul. -

action on Doctor's bill -
Seque for Def^t. - prescription is pleaded aff. Plff. aut^r. the
Def^t. has been us^d. on facts & act, but does not acknowledge the aut^r.
Referred for Plff. says, that Def^t. has interrupted the prescripⁿ
by his acknowledgment -



f48

50.
10
£69;

50
18..15
68.15.
69
£137.15

100
120. 1/2

R.

G.B.



