K. B. Civil Pleas. Montreal

June Term
October Term } 1810

and

February Term. 1811.

June Term 1810

Friday 1st June 1810

~~Present~~

Fish & al. — Trusdell.

Defts. moves for hearg on merits. —

Pltff. object. that their witnesses have not been examined by reason of their absence —

Defts. answers that Pltff. have not done diligence — rule for com. Roger was obtained on 20 feby last & the writ was not sued out till 10th March —

Pltff refers to deposition files to shew that all necessary diligence was done. —

Saturday 2. June 1810.

Present —

all the Judges.

The King & Jac. Veitch

Atty Gen. to admit Pris. to bail on charge for assaulting a Justice of Peace with an intent to kill him while in the execution of his Office —

Burgess — Offence charged is a misdemeanor & bailable —

Sol. Gen. power of Court to admit to bail is discretionary & may be refused — the circumstans of case shew character of Pris. to be a violent & dangerous man —

~~Lavarde~~ = Lefevre ~~Grandin~~ Bubfaille
~ Lefevre v Bourgeois & Mondelet } action Hyp. for arrears of rents on land possessed by Defts
Mbrs. for Defts called in Mondelet as his Garant —
= Beaubien. for Mondelet — ~~Pltffs pay~~ ~~debt~~ Incid. demand —
for work done as Pltffs agent about his Seigniory —

Vrgé for Pltff in reply — The Incid. demand is inadmissible — the debt cannot be set off agt Pltffs demand —

Cuvillier & McLaurin & Howard Intervs } Action for recovery of Staves seized under writ of enhancement.

Pltffs contract with one Graves — money advanced — men hired by Pltff to carry on the cutting Staves — McDougall took the assignment from Graves in name of Cuvillier of the Staves — qt. thus became his property —
Staves seized proved to be same as those deliv. to McDougall — by witnesses who made them & saw them after seizure —

Moves that Com. Rogs sued out by Interv. party be rejected from the record, as being irregularly returned — no affidavit of the regular carriage of the Com. —

Rolland for Defts says that he held the Staves for Howard — a fact which has been made out by Howards claim — now prays that he may be discharged with costs —
Ogden for Intervs Party — mo. to reject Com. Rog. too late, shd have been made when the mo. was
Pltff has not proved any of the Contracts he has filed —
Staves bought by Intv. party, from different people — some of them cut after they are alleged to have been deliv. to Pltff — Murray took Pltffs Staves
Ross in Reply — Com. Rogs

Cuvillier
v.
Slater
&
Merkell

action for recovery of a certain quantity of Slaves –

Ross for Pltff. mo. that Comm Rog. sued out by Dfdt be rejected from record – as irregularly executed, the ~~witness depositions~~ answers of the witnesses being taken down in a continued deposition & not answered separately – & no answer made to the cross-interrogatories joined by the Pltff

Ogden for Dfdt. objection made by Pltff too late –

Riché
v.
Campeau

action on Obligation transferred to Pltff.
Quesnel for Pltff –

Rolland for Dfdt. The transport not signified but by summons – the right not acquired but by signif – & right shd be compleat before suing at law
Pothr. Vente 554 –

Sewell
v.
Gordon

action on a promissy Note to Pltff in 1801 –

Robertson
Rolland & Rl. Comm

Tuesday 5th June 1810.

Present

All the Judges.

The King
v.
Jas. Veitch

The Court were of opinion that the Pris.r ought not to be admitted to bail under the aggravated nature of the offence

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Folsom
v.
Pease —

Action on a foreign Judgt. —

Huckins
v.
Pease —

Objection to service of process in 2d. Cause, by leaving a copy of writ of Attach.t at the Gaol, to wh. Defd. had been committed in first Cause —

Rolland for Defts. There can be no domicile contrary to the will of the person — no domicile in gaol — Defts. no domicile.

Ross — 2 copies of process serv.d on Defts. one at Gaol, the other at the house of Beach — last not objected to —

Brisset
v.
Brisset

Debt on Obligation —

Georgen for Defd. oblig.n granted upon allegation of Pltff that he had paid certain debts for Defd. — this not true, refers to the testimony adduced — Pltff ought to prove pay.t of the debts —

Rolland — not necessary to make proof of pay.t acknowledged by Defts mis.p.

Indian
Raymond } On mo. to quash process as unduely served —
Rolland for Dfd. — Dfd. was returning officer for the election of a member of the County of — during which & while he was in the actual discharge of this office.

Denvt. vo assignation. while doing a function publique.
Pothier. proc. Civ. Pt. 1. act. 2.
Repertoire vo assignation. —

Ross for Plff. 2. Raymond. Ashley. v. White — returning officer, no Judge
Sol. Genl. Returns. not in the actual discharge of his duty — having left the place where he receivd. the votes & gone to the outside of the house when the votes were taken —

4 Term Rep. 377. } service of Summs. may be made upon Duties & others
5 do 209. } in the Inferior Courts —
authority from Denvt. 2 refers to the Civil Law proceedings —
Ordnc. of 1785. makes no distinction or exception in regard service of process may be made to all persons & at all times under it — the ordonnance of the Code Civile, makes no exemption in favor of public officers —

3 Bl. Com. 288 — 289 —

Rolland for Dfd. If ordc. of 85 is to be rcd. in the full extent demanded — a Judge on the Bench may be served with process —

Gross & Co
v.
Wallace

Action on promissory Note –

Gale for Defd. – The report – cannot be considered as a report – not signed by a public officer – nor deposited by the Arbitrators –

a day given for proof – of signature of –

Monarque
v.
Dupore

~~Action for recovery of monies~~

Woolrich
v.
M'farlane

Action on Note –

Rolland for Defd – 1. Prescription – ~~not~~ no proof of interruption the words of Defd. after the institution of the action not ouff. – not a mere. transaction, – not payable to order – not made by a Defendt – proof of interrup. not admissible nor ouff –

Beaubien – Defd. was a merchant when the Note was made – Defend. has acknowledged the debt –

Castonguay
v.
Laberge

Action of damages – on Contract for building a house. –

Ross for Defd. The agreement not double – testimony adduced in support of it – this objected to – acte with a mark, not

ouff

suffit. the mark being no signature – cannot be considered a sous seing privé, & if for more than 100.ᵗᵉ verbal testimony cannot be admitted to prove it – a marginal note on the agreemt. without mark or signature – no time fixed for doing the work, nor has the party been put en demeure. –

Lacroix. Double emit – this authority not applicable to marché – binds Defᵗ. has begun the work – Damages clearly proved –

Richardson v. Sealey – { action of Reunion – no plea made –

Thursday 7.ᵗʰ June 1810.

Present.

All the Judges.

Cartier & Cormier opp.ᵗ v. Cheval } monies adjudged to Plff on his giving security to pay back 2. Gp. Com. art. 99. p. 30. Nº 7.

Riché v. Campau. } Exception dismissed –

Bellefeuille.
Bourque.
Mondelet.
Gent.

Incidental demand admitted, & a day ordered for proof thereof.

Bellerdy
vs
Archambault

Rose for Pltff. — Ross for Dft.
Objects to right to evoque Cause without a power to
the attorney to do so.—

1 Raymond 739
Bull. N. P. —

Day & Gilston. —
vs
Abw. Lampman.

7 Term. 63. —
Smith v. Poujet. —

petitions entered —

1 Term. Rep. 64 —
Carter v. Pozeau —

1 Term Rep. Green. v. New River Co —

Green
vs
New River Co.

4 Term. Rep. 589.

Discharge —

Booth
vs
Cook

Power to take
Notes &c

Kemp
vs
Serjeant

action for goods sold —
arbitrators —

Livingston & Shuffelt

Defr. moved that action be dismissed for want of security for costs —

Pltff. The cause cannot be dismissed — as the law says that the proceedings shall be only suspended & stand until such security be given. —

Scott & al vs Olcott —

Defr. moved that cause be dismissed for want of a power of Attys to prosecute them —

Pltff prays for a day to produce power. —

Saturday 9th June 1810. —

The Ch. Just. absent

Castonguet vs Laberge

Debt on oblign

Ross for Defr — Plea — usury — Defr. made agreement with Perry to get a saw mill from him — borrowed £125 from Pltff. — contrives to get Sublease from Perry to him Pltff. & then Pltff re-leased same to Defr. for a cap of wood worth £50 — 3. act passed by diffr. Notaries — to conceal the usury —

Poth. usure — Nos 89. 90. 91. & al. refers to Contrat Mohatra. Vente. Nos 37. 38. 39. & Societé. No. 22. —

4 East. Rep. p. 57. what constitutes usury — 2 Douglass. Low v. Waller. 4 Term Rep. 453.

Pltff never had possession of the mill before lease made to Defendr —

Lacroix for Pltff. risk that Pltff wd be bound to pay considerations of lease to Perry, if Defr. failed therein —

Societe. No 23. Poth. Usure. No 87. Ferr. Dic. usuraire.

Vente 37. 38. 39. Societe No 22.

Ferguson.
vs
Laine. — } action of filiation — & seduction under promise of marriage

Ogden for Dfts.

Pltff states herself to be a widow — ought to prove death of her husband — proof contradictory. as to Child —

Vincent
vs
Bourie & Laboutie } action of account. Ant rendered en conseq: of an Interlocr.

Lacroix for Defts — Testimony of Prefontaine does not state to whom the effects belonged to which he refers —

Jac. Bourgie. one of Defts wits states that father & mother of Pltff. had no sheep or poultry belonging to them in the poss. of Defts

as to rent claimed by Pltff — they have no right to it as the property was given to Defts & the occupation of the house reserved by the old people —

Beaubien for Pltff

Allegation of Defts in the ant they render that the whole was divided between the parties after the death of the old people, contradicted by their own testimony that at the death of the old people there existed no sheep or poultry —

House & Garden reserved by old people, not during their lifetime, but as their property. Therefore defts are accountable for the rent since their possession —

Coutelée
v.
Taubert
&
Dumouchel
Garant

action for Sup.t. rents & loads & exhibition of titles. —
Def.t. calls his Garant for such part of the sum demanded which he owes personally —

Lacroix for Garant — denies debt except £7. some shillings —
19 Sept.r 1808 — sale from Gagnon to Lefevre, his predecessor ensaisiné, & presumes pay.t up to that date. Prud.t Ch 8. Pages 398. 399. —

Quesnel for Pltff.s Ensais.t made by mistake & by fraud of Dumouchel
That ensais.t ought not to debar Pltff. of this action —

Careau
v.
Berthelet
&
Careau opp.t

On report of Experts, touches value of a lot of ground belong.g to Pltff which had been sold as the property of the Def.t —

Ogden for Pltff. prays hom.g of report —
Bender for Def.t Objects — that land ought not to be estimated at what it is now worth — that the whole land sh.d be estimated & the part in question valued thereon — & not the separate estimation of the part belong.g to Pltff made — Costs ought not to be p.d by Def.t being occasioned by Pltff —

Monty
v.
Goguet

Rule Nisi — why Ca. Sa. sh.d not issue in satisfaction of Pltff. Judgm.t — the Def.t having no goods & lands whereon to levy the

dem.d

Ross for Dfdt.

Objects. that Dfdt. had goods & chattels at the time she obt. the return of Nulla bona from Sheriff – no diligence shewn to obtain knowledge of goods & chattels – Plff not entitled to Ca. Sa – not law. not in reduction of Code Civil

Vigé. for Plff.

Not ment. in reduction of Code Civil, is the reason why it must be cons. as in force in this Country – decided. case of Wolson. v. Peakin – Not obliged to discussion of Dfdr. goods, as Plff can have an Exon. agt. body & goods, when by law a Contraint. art. 13. tit. 34 Code Ca. Return of Sheriff suffit. presumption that no property.

E. W. Gray
Jos. Charbonneau } Question as to Copy of Oblig.n signed by another Notary than the person who passed same –

Monday 11th June 1810.

Present.

All the Judges.

Coutelée
v
Faubert.
&
Dumouchel
Gar.

The ensaisinement considered as proof of payt of all prior mutations. but gave a day for proof of fraud —

Careau
Berthelet
v
Careau oppt

Report hom. without Costs. as it was by Plffs. own mistake that the estimation of the land became necessary —

Scott del
v
Oleott

a day given to fyle power of

Rolland
v
Fr. Germain

On rule Nisi why Ca. Sa. shd not issue agt him —
on ~~Mot. 18 June 1805~~ — 20 feby. 1801 —

I declined sitting in this Cause.

Bedard for Dfdt

The Judt in appeal does not state what Judo Cause has been reversed Dept. says, that it is Judt. of 20 feb. 1801 — it is uncertain which, Poth. Obl. 866. 867. Judt. is null when object of condemn. is not ascertained. the presumption therefore ought to be in favor of Deft
As writ of appeal does not refer to the date of the Judt. from q. the appeal is intended to be made — Copy of Security filed has no certain

certain reference to the Judt—

2. The Judt. discharging Defdt. from Gaol is in full force, and does not appear to have been reversed, tho. the Court were of opinion that the Judt. of 18 June 1805 was the Judt. upon which the appeal was made & reversed in appeal—

3. It was agreed upon confessing Judt. in favor of Pltff on 20 feby 1801 that Pltff sho. account with Defdt. respecting property in his hands belongg to Defdt— refer to oath of Pltff

4. That since Judt— Pltff has recd. monies on acct. of Defdt—

5. Under a writ of Saisie arret at suit of Mr Hunter in wch Cause Pltff intervened, all credts of Defdt. have been seizd., notes, books, & many debts lost in consequence, as no diligence has been done to recover the same—

6. Pltff owes Defdt. upwards of 30,000tt. by account of sundries monies goods pd & furnished to Pltff— refer to Pltffs oath in proof of this—

Sol. Genl—

The Judt. of 1801. could not have been appealed from owing to the lapse of time between it & date of writ of appeal— must be Judt. of 18 June 1805— Security mentd. date of Judt. from wch appeal is made— Defdt. ought to shew other Judgts. were in appeal—

As to agreemt. of minors act. the Court cannot take notice of it, but Defdt. must proceed to his action— but this act has been considered by Judt. of 1805 wch has been reversed—

Defdt. alledges no payt. since Judt. of 1805—

That any question respecting the Saisie arret cannot be set up agt. the Pltff's. Judt. if any illegal proceedings have been had respecting that Saisie the Dfd. ought also to proceed by action agt Pltff.—

Pltff ought not to be oblgd. to discuss Dfd's. gs. he has acquired since he was liberated from Gaol—

Rolland for Pltff.———

The presumption is in favor of Pltff. that Judt. of 1805 was reversed That Judt. comprehends the amount of Dfd's. claims & there can be no right to Dfd. thereon.—

Saisie arret made at Suit of another person, Mr Hunter— all right of Dfd. under this in case he shd. suff. injury, wd. be an action of damages.

Saisie arret is pending—

That the payts. pretended to be made have been comprehended in the proceedings had on gs. the Judt. of 1805 was rendered, & therefore cannot come before Court

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Bedard in reply.

It ought not to be left to presumptions to determine gs. Judt. has been reversed, it ought to be certain beyond any doubt, & if any doubt exists it ought to be construed in favor of Dfd.—

The facts & articles ought to be allowed to ascertain under gs. circumstances the Judt. was given—

No presumption of Saisie arret, as Court has adjudged thereon—gs. precludes the presumption—

There is a compensation of debts by law— the Pltff is Debtor of Dfd. a fact to be ascertained by Pltff. oath.—

That Dfd. is a man of 70 years & upwards & therefore not liable to Contrainte to payt. of his debt——

56

Oldham Cur. } Action for recovery of monies on Counts for goods sold &c
Lacroix }

Rolland for Dfdt.

Action for purchase money on a deed of Sale, for Incl. rights and for goods sold, objects incompatible to be joined in the same action

Sol. Genl.

On Incl. demand Plff has pleaded prescription - on 2d. Count must adjudge -

Tuesday. 12th. June 1810.

Present

All the Judges - except Judge Ogden.

Brisset. } Indt. ag. Defendt.
Brisset }

Oldham Cur. } The exception pleaded to the joining of the different counts in
Lacroix. } the Declaration, rejected. -

See. Tit. 20. art. 5. on note. of Code Civile.

See. also v. J. Pigeon. p. contra

The Court when there are cases of a different nature, such as an action to obtain possession of a lot of ground and for monies lent, because there must be a different course of proceeding, a diffte Instr. & a different Execution - all this does not apply to the present Case -

Livingston
vs
Shuffelet

A day given to the party to give security for Costs—

Foretier on claim.
2 Sabrevois de Bleury Gart

Bedard for Claimt—
Our claim to certain part of the fortification grounds sold to Claimt. by the Garant, which he lost on his claim & was adjudged to the Commissioners— the Claimant now demands his indemnity for the lands he has not obtained, & also his costs to Foretier

I declined sitting in this Cause

The Sale conditional, the words are —"si les titres le portent"
The old titles go to the Citadel pieces, wh. Foretier says, was on a line with St James's Street. & that the ground between that line & the little River of Montreal was conveyed thereby—

Vigé for Gart—
Construction of Deed of 23 July 1784 shews that claim en garantie is not founded— The Garant never called on to furnish suffit titles to Claimt— he proceeded to establish his claim without these titles— & the Gart was bound only to give such as he had in his possession— The Court has decided that titles do not carry on them suffit conveyance of the ground in question, therefore there was no ground for the demand en garantie.

Demart vs Garantie Su. 2. No 2

Beaubien for Gart— Mr. Bleury did not represent the persons who had a right, viz. Cavelliers, & therefore Foretiers claim failed— Gart. ought to have his Costs— Mr Foretier must suffer loss, if any, as it does not proceed from the act of Bleury nor his default, besides it is to be considered as the fait de Prince apt qs there is no garantie

Rolland for Gart— The title of Bleury goes only to the little river— he sold no more— the addl words, si les titres le portent, are at the risk of the Buyer

Beckard in reply— The Gar[t]. by his plea, admits that he was prop[r]. of the ground in question, & therefore he admits the extent of the Sale to Garant and the claim en garantie — Gar[t]. obl[d]. have produced titles to support claim, as he had agreed was bound — authority as to fait de Tierce not applicable, — as the land was given up — not taken away —

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Hagar. — v Henderson. } action for recovery of freight & value of Cargo assigned by Pltff. to Defend[t]—

Stewart for Pltff. Defd[t]. has filed an act. of the proceeds of Sale, on q[l]. the present discussion is to be had —

£1156. debits admitted — debits in England contested — viz[t] under 1 Sep. £27. 1/ double emploi — see Defd[t]. exhib. № 1.

£230.4.5 — no explanation of particulars of this charge

£472.13.7. Money p[d]. to Pltff. agent — no proof as to agents of Newman & Co[y]. the agents themselves called as Witnesses to prove their own capacity — this irregular. Pltff ex[d]. on fact & act. admits part facts. but must be taken in toto —

£56.15.1. Commission — rebutted by Defd[t]. admission - exhib. №.

Objects for Defd[t]

admits double emploi of sum of £27. under 1 Sept —

£472.13.7. proof of power of Att[y]. to Pltff. agents in Liverpool, Newman & Co. authorising them to receive the proceeds of the Cargo — nothing to shew that £117 — was ever taken back by —

£56.15.1 Commission — only £5 p[r]. cent — the other allowance of 7½ p[r]. C[t]. on the business not objected to — even called any two Merch[ts]. to whether that it was unreasonable — —

Ferland
v
Boivin — } action of Separation —
Case submitted. —

Caron.
v
Rochon. } action to rescind an acte of partage, for cause of lesion.

Rolland for Plff.

3 Obj^n 2540^th. augmentations sur les biens propres de feu Lorei —

4 do — 4500 remploi à la veuve — the heritage must turn to profit of Comty —
Pothr. Com^te 586. 589
Pothr. Com^te — 585. must turn to profit of Comty —
N° 594 — rente viagere — the excedent of revenue of rent to be pd for by Com^te — not more
Duplessis. Com^te liv. 2. ch. 4. Sec. 2. vol. 1. p. 445

Tutor not bound by his signature to the acte of partage. Denizt. v° partage. N° 30. — when partage n'est made by authority of Justice — Dic. Droit. v° partage. Pothr. Succ. ch. 4. art 4 § — 2 Bourj^n Succ^n — Lebrun. Succ^n — bk 6. tit. 5. p. 420. art. 21.

* manière de procéder aux partages. — Art. 6. Rescision des Partages. —

Bedard for Dfd. } as to the Donation of moveables, it must be followed by tradition —
Denizart. v° Donation. N° 37. & 38. 39. 40. —
Ricard. 1 vol. 1 part. ch. 4. Sec. 2. dist. 1. p. 214 —

The Tutor cannot come agt his own act — the Minor may, after majority
That the parents cannot decide as to the lesion, nor by their act authorise the Tutor to come agt his own act —

Lacombe. v° partage — says that every partage is provisional made with a minor. —

That estimation of the augmentations made on the propres of Lorei was made by Expert — agt gt. the Tutor can have nothing to allege —

That the alienation of the propres of the wife, in consideration of rents carries a remploi of that propre — it being of no moment to what purpose or on what consideration that alienation has been made, had it even been for rents payable to the wife herself —

That if Partage be set aside — yet the Tutor ought to be bound by his acknowledgments in the acte de part. already made —

The moveable property now in poss. of Defdt. were given to him by an act of Cession made by the widow - in consequence of which they were sold & bought at Sale by Defdt - after this the act of partage was made & the Pltff therein acknowledged right of Defdt -

Wears apparel claimed under Sect. nem impetij -

Rollard. Thus assemblé de parens, warrantes the Tutor to come aft. his act in this Case -

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Stearns. -
" Rasey - } action on a promissy Note -

upon Defend. objected, by Plea - that there was no list of Exhibits -
Gurgen. ob. rule to shew Cause why plea shd not be rejected as irregular -
1 Because such objection ought not to be made by plea - & 2d. having serv. copy of note with Copy of Declaration, & ~~Copy~~ note being made a part of Decln -

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Monarque
" Duperé - } action for monies pd by overcharge on a Sale of effects made by Defdt.

Bedard -

Pltff purch. sundry effects at Sale of Beaque's, effects made by Defdt - before receives his act. he pd him 2 pay 2094 to Defdt. when he wants to settle balce Defdt. rejoices £16 - more - Defdt. took back the two receipts he gave for 2094 & gave one general acquittance for the whole 2161 - making an over charge of 317 - Then is a comment. de preuve by pieces of Defdt on the back of the act -

Poth. ob. No 861 on comt. de preuve p. cent - says - it depends on the discretion of the Judge
1 Bornier. tit. 20. art. 3.
Lacombe. vo preuve. sec. 1. No 2 - fraude may be proved by writ -

Lacroix for Defs.

Denies that there is any room for a com.t de preuve par ecrit. as there is nothing can be comprehended from the pieces on the acte

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Decousse
v
Turgeon. } Action for house rent -

Lacroix - says, it is necessary to make proof of facts. -

Turcot
v
Maillou } Debt on Obligation -

Beaubien for Plff

Question whether the Incid.t demand set up by Defs. can be rec.d bef.t the Plff.s demand - It is not liquidated - & is prior to Defd.s obligation - cites Poth. Obl. N.o 592. an unliquidated demand cannot be set up agt. a liq.d demand nor a demand that requires too long discussion - Defs. retains the papers respects the vessel in question -

Poth. Obl. N.o 592

Rigé for Defs. The Obligation in question was made for the Plff.s share in the vessel, who promised to account w.th Defs. for the profits of the vessel which he had before that time received - That there is a connexion between this demand in Chief & the Incidental Demand -

Wednesday 13th. June 1810

Judge Dorion absent

Monarque vs Dupéré } The Plff admitted to his proofs—

Decousse vs Turgeon. } An order for proofs

Stearns.— vs Rasey.— } Plea dismissed.—

Careau vs Berthelette et al. & Lawzon opp.t } On claim of Lawzon on opp.t a fin de conserver, for amt. of an Obligation made by one Defd.r & the father of the other, dated 3 Sept.r 1784. & other the 18 Sept.r 1790, both carrying mort.e on land sold by Sheriff

Rolland for Oppt. The Defd.r Ill Fauteux who is son of the late — Fauteux one of the parties who made the Obligation & presumed to be his heir not having renounced to his succes.n cannot set up a plea of forescri.n because a possess.n of 10 years does not exonerate him from the debt being personally bound to payt. of that debt— to exonerate him from presumptive title of heir a Renon.n is necessary —

Lebrun. Suc. liv. 3. ch. 4. N.o 79

Bender for Alexis Fauteux, one of Defd.rs says he acquired land ~~his~~ by deed of Cession of 5 Jan.y 1797 from the late Jn. Bt. Fauteux & Marg.te Jos. Berthelette the other Defd.rs

years ago by Donation from his father & mother, & having enjoyed the land since that time he is entitled to plead prescription to Appts claim.— Defndt. says he is not heir of his father, having never interfered with his succession — besides is one only of ten children each of whom ought to pay their part of the debt — that he never made any acte d'heritier.—

Saturday 16th June 1810.

Ch. Just. absent.

Riché — Carrpeau & Crevier } The Defdt. ex. Pltff on fait & art. & now moves to withdraw the answers as not meaning to make use of them.— The parties objected — Defdt. refers to Pigeau.— fait & art. —

Day & Gilston vs Lampman } Action for recovery of the value of a certain quantity of rum lost by the negligence of Defdt. servants —

Gale for Pltf. Case of carrying for hire, a puncheon of rum stove while in the hands of Defdt.—

One Jno. Fleming went by order of Defdt. to St Johns & then took the rum — from his Mills, who had charge of it —

2 H. Bl. Waugh. vs connexion in trade between Defdt & carrier — acknowledgt of party sufft —

1 T. Rep. 27. Forward vs Pitcher — Carrier bound in all cases of loss. except arising from act of god & the Kings enemies —

Defdt. by Ross — action does not lie — Defdt. not a Common Carrier —

The order to Defts. to forward the goods not proved—

Poth. Mandat. № 18 – The Defts. consent never intervened on this order & was necessary to bind him № 31–

The order never came to the knowledge of Defts. nor did he give any directions to Flemming to take the carriage of the rum – Denies that any partnership or connection in trade existed between him & Flemming –

Contr. Louage. № 6. to № 31. from № 32 to 40. & to 45 – what requisite in the formation Contract de louage. none of the essentials existed in this case –

Objects to cred. of Bingham – Mills, Graves & Whitney – as interested –

Bingham wrong to deliver rum to Flemming – interested to swear that Defts. was concerned with Flemming –

1 St. 690. If Pltffs. servant take charge of the goods it discharges Carrier –
1. Term. Rep. 604. 607. 609. Carrier not bound for things carried out of the common way
4 Burr. 2. Paton. v Gibson. reward of carrier shd. be proportd. to risk –

Gale in answer. The order in question is filed by Pltffs & admitted to have been written by them –

Mays dup
" Trestler. } A day fixed for proof –

Rollard
St. Germain } on question whether Defts. be liable to contrainte par corps, for part. of Instt. in this cause, being above 70 years –

by old law contrainte did not hold – Ordr. of 1785 does not abrogate the old law – Court has adjudged – case of Robertson v Hubert dup. that contrainte was not introduced as. married woman by Ordr. of 1785 –

Auldjo & Maitland
v.
Jn.o Blackwood.

Action Cause cont.d to monday –

Coutelée
v.
Faubert
&
Dumouchel
Gar.

on action for Lods Lods & Ventes – on proof made respects error in the ensaisinement. –

1.– Ensaisinement made on a Contract q.l did not carry Lods & Ventes the person not being in possession of the land –

Prud. – p. 393. – before never possessed the land – under the Contract on q.l the Ensaisinement was made – therefore null –

Monday 18th June 1810.

Present.

All the Judges.

Gray. — Charbonneau } Copy of Oblig. signed by another Notary than the ~~person~~ Notary who passed it rejected as proof, even on a default case —

Gibb. — Hériquault. & Garants. } Lust —

Vassal — Rea } Action for freight & hire of a ~~Sloop~~ schooner — at £62.10 ℔ month

Sheat. The Defr. pleaded, that by ~~disaster & tempestuous~~ stress of weather & Accidents, & damage done to the vessel he did not perform the voyage in the usual time, but an unnecessary delay occurring from this Cause he was obliged to winter the vessel at Charlestown — That the hire ought to be suspended during the time the vessel was so wintered — cites — Pothr. Louage. No. 136. & Seq. — the general principle Charte partie No. 83. — from whatever means the preventing Cause arise — Bedard for Pltff.

The Pltff contends that Defr. has not made suffr. proof of any ~~retardement~~ by stress of weather, or other suffr Cause — That Defte has not done suffr. diligence by sailing in time with the Schooner Admits the principle of law contended for by Defte — at all events says that he is entitled to hire for 3 months —

Cuvillier & Maitland
Blackwood

On Sale of Pot-ashes –

Ross for Pltff. claims that Dfdt. gave good ashes or pay damages –

Stuart –

Contends that by means of Defts. order a delivery was made of ashes to Pltff – evidence does not shew that at that time the ashes were in bad order – ought to apply to that period to invalidate the sale – Vente. 313. – Pltff. pd. storage after such delivery – On 1/4 dum. part of ashes actually – order then in hands of Pltff – delivery of part ought to be considered as a delivery of the whole – at all event action can lie only for 18 barrels, as Pltff. actually rec. 10 barrels, & therefore can claim no damage as to qt. was rec. – Vente. 55 – delivery ought not to be delayed by Pltff. act – otherwise Defts. discharged –

Survey made at instance of Pltff. without participn. of Dfdt –

su
1. Camp. N.P
p. 256 –
Hodgson v Lebret
Delivery of an order for goods.

Hennyal & Mangindal
16. p. 452
payt. of ware house rent

Beaubien for Dfdt.

Cause of damage of 18. because the barrels were not new-hooped in the Spring qs the Inspectors say must be done

Ross in reply –

As to delivery – no specific delivery proved – the delivery may be enforced by either party – but it ought to be done by some means –

paying storage. no proof of buyer & may be a collr. agreemt. to do so –

Edmond Beaudry

action on obligtn

Vigé for Dfdt – pleads. Usury to Obligtn for the forbearance of 1800ts 28 bushels wheat stipulated to be pd. annually

see Kames. pr. Eq. p. 56. 57.
Poth. Usur. 3 vol. 4to 758. No. 105. –
1. Despeisses. p. 219. – fruits d'un fond au lieu des interets. –

Barnard
vs
Poirrier

On rule Nisi — why report of Experts shd. not be set aside —
Action for legitime — referred to Experts to ascertain the value of the land at the time of the alienation — Objected to Report — That J. Bte Feré Defts. Expert, advised the Suit, & counselled the party therein — That Alexis Guyon the tres arbitre, was named at the instance of Feré & because his opinion on the point was previously known —
That report is irregular & does not correspond with the Interlocutor the present value only of the land estimated, & not the value at the time of the ~~Sale~~ Donation
The estimation of rente & pension made according to what was pd not according to what the amount of the whole wd be if regularly paid & according to the mode of estimation of such annuities —
The estimation of the land at present, comprehends the personal industry of Defts. qh is unjust,
Poth: Don. entre vifs. Sec. 3. art. 5. § 2. p. 515. —
The Experts shd have made a detailed report to ascertain whether the proper objects had entered into their consideration —

Rolland for Plff.

Refers to report as regularly made. — That the estimation is just, as the death of the party ascertains in a more certain manner, than the usual estimation for lods & ventes. —
Moves for hom. of P. V. — — In a Don. when Expert. does not exceed the revenue. Poth. Don. p. 511. —
Int. due from decease of person — — prays Judt for quant. of estimation of £450. —

Bedard for Defts. That the rent pd by Defts. will amount to £68. altho' the value of revenue according to rule of allows £10 p C. wd be only £45 —

Gillespie & al. v. Auldjo & al. / Auldjo & al. v.

In 2 Causes joined – Rule Nisi on Security for Plff to shew cause why a certain sum of money rec^d by them beyond the Plff's proportion of their debt should not be refunded by them.

Gale for Security – object to the mode of bringing in the Security into the Cause – y^t he contends ought to have been by writ of Summons –

Stuart for Plff^s – The Plff^s not in default – they ought first to be called upon

Ross. for Curators – The Securities have made themselves parties to the Cause by becoming Security –

Riché. Campau & Crevier Gar^t

Debt on Obligation transferred by gar^t to Plff

Plff. objected to test^y of 2 wit^s – as related to Def^d^s. N^o 1 & N^o 2. Def^s. set up plea of usury, only one wit^s to prove it –

Rolland for Dft^s says that usury is proved. –

Sol. Gen^l. Wit^s not comp^t 1 vol. p. 196. Bonin. – art 11. tit. 22. –

M^c Cumming & Vanhaussen Jas. Scott opp^rs

On opposition of Scott – Huntington

NOTHING SAID

Tuesday 19th June 1810.

Courtelée v Faubert	Judt. Entd
Aymond. v Beaudry	4 Days given for proof
Day & Gilston v Lampman	Dismissed —
Stearns v Racey —	Plea rejected
Dorion v Caron. & contra	Judt.
Myer v Mondelet	Serment suppl. referred to Pltff
Cartonguié. v Labarge.	Judt.
Cartonguié v Labarge —	Principal demand dismissed — Judt on Incidt. demand for Labarge deducting what he had recd from Pltff

Wednesday 20th June 1810

Woolrich & M.Farlane } the oath defered to the Defts. by the Court —

Gray & Scott }

Cases under deliberation.

Riché & Campeau & Crevier Qt. } On question whether a relation can be a witness to prove Usury. —

Usury is a delit & relations may prove it — See Dunty. p. 235. —

All kinds of proof is admitted to prove usury — Jb. p. 619. —

Deft. made. — Michel St. Maurice — does not say that 300. was the only consideration of Oblig. — does not identify the Oblig. —

Deft. aunt. — Marie Cappe — is not more precise, only says, that she knew that Provin at the time had no more money than 300. to lend — but this is not conclusive. —

Gab. Lefevre — more positive. —

Jn. Bte. Bernard & ux Jn. Bte. Poirier } See statement from Report of Experts

Vassal
vs
Rea

On charter party —

No 1. Dan. Niven. — 11 Nov. to 5. June — arr. at Quebec end June —
No 2. P. Diehl — 8 Nov. to — May — do —
3 Left Quebec Sep. 4. 8 Nov. to last May. — do —
1808
No 4. Jno. Cowen do — to 9th June —
Wm Brimner — to do —
Jno Hawkins

Caron
vs
Rochon

action of Asst —

Auldjo & Co
vs
Blackwood

Non-delivery of Bl/k —

See. 1 Camp. N. P. 236. Hodgson. v Lebret — delivery of order for goods —
J.C. — 452. Hurrydal. v Mangles dal. — Payt. of ware-house rent. —

Pangman
Beaudouin } on Promissy Note –

Carreau
Berthelette
Lawzon opp^t } on oppos^n of Lawzon –

sea 1. Borj^s. p. 906. art. 14. +
Report^s v^s. Renunciation. p. 136. –

Cuvillier
M^c Lauren
Howard Int^s }

N^o 1. Jos. Boisel. writ^d for Pltff – employed by him – made 150 Staves – marks on them – Bailiff martin, shew^d him 2 casks q^s he s^d he had seized after last St. Michel 2 q^s. wh^s knew to be part of those he had made 150 – by marks on the heads thereof
N^o 5 – Louis Lacombe – same testim^y –
N^o 2. Jean B^te Lalotte. same test^y. but not so pos. as to identity of wood seized –

N^o 3. Geo. M^c Dougall – speaks to hiring men – cutting the Staves – Delivery –
N^o 4. Jn^o – M^c Kinstry. – hiring of men by Cuvillier –
N^o 6. Jn^o – Martin – verification of Cribs seized. +

N^o

Prime Rollins – opp^s purchase
N^r Elias Peck do
Ch^s Dunham notts
Wm Robertson

Levi Graves – did not go to Elizabeth Town –
Stephen. Smith. notts
Willard Curtis – note of P^s – not present at Delivery
pos. Adolphus Armstrong – notts
pos. B. Hazen – at Delivery at Jones's 3700 – Liddle. 3700
pos. Jon. Willard 3700 – Liddle 3700 –

In: Sagar
Wm Henderson } No 45. June 1808 -

Objections -

	No 1	£31.4.1.	Slops —	This sum appears to have been pd. to Ross & his receipt given for it
reject	No 2 & 3	7/4. & 11/4 = 18/8	—	This Deft. gives up. & must be deducted from his acct
reject	4	£4. 15. /2	Discount —	No proof of this — besides 7/p cannot be admitted —
reject	5	£56. 15. /2	Commiss —	I think this is done away by Defts. admission in Exh. filed by Pltff with his repln
	6	£28. 18. 4.	Interest —	Parties agreed as to modification of this sum
allo		£230. 4. 5.	Seamen's wages —	must be admitted —
allo		£64. 4. 7. (58. 17. 2)	Double employ —	do —
		£174. 11. 3.	taken back by Morall & Borland —	I think Newman & Co were the agents & attys. of Pltff & they rec'd the full sum of £472. 13. 7. from Morall & Borland, the giving back any part of that sum cannot therefore be charged to Deft. but was the voluntary act of Pltffs agents.

In Sagar
Wm Henderson } No 109. Oct Term 1808 — Action for Slaves

October Term. 1810.

Monday 1st Octr 1810.

Present

All the Judges.

There was no Cause heard to day —

Tuesday 2d. Oct. 1810.

Gaspé Baillé
vs
Brunelle

on a promy Note given to his husb.

Vigé. Note belongs to comty with her late husband — not her property. nothing to prove the legitimacy of her children in whose name the prosecute — partage made wt an absent — not ratified —

Prescription apl Note — Defd is not personally bd. is only a caution & princpl debtor ought to be first discussed — Dom. Lw. 3. Sec. 2. art. 1. — Obl. Nº 407. q. & 13 — Lacombe vo Caution Sec. 3 - Nº 1 —

Rolland for Plff.

The debt demanded is the property of Plff. as appears by the Inventory & partage with the heirs. —

If heirs not sufficiently named, Defd. ought to shew who the others are &

That Debt is due by Defd. before discussion — & if necessary Defd. ought to make the necessary offers to furnish money to make the discussion —

Vigé — nothing to shew that children making partage are the children heirs of the late Baillé. —

Prescription ought — because Note presumed paid — & if Debtor be called as oath may say so —

Caution is not bound to furnish money to carry on the discussion, except in case for sale of real property — not alleged that debtor is insolvent —

Busby vs Seizure — Stuart for Defts. mos. to quash writ from irregularity — Defendt has no domicile — has made a plea to same point — submits that matter stand over till merits of that plea be heard —

Ross.

J. John — Stuart — Saisie arrêt irregular — swears that Defts. owes him above £10 Ste & is appr. without a Saisie he will lose his debt — not enough under Ord. of 1787

Pleaded — Plffs. right is founded on his privilege on the wood seized, as he was one of the wages employed in cutting it down — This right cannot be decided upon motion — the rules of practice admit motions as to irregularity of service but here the right of privilege is brought in question —

Martin vs Ker — same points as to regularity of the affidavit.

Wednesday 5. Octr. 1810

Caron & Rochon } Interlocy for nomination of Practicians. —

Oldham Curr & Lacroix } Interlocy order S. arbitrators for exn of Accts —

Busby & Sise — } Ct. were of opinion that every question respecting Jurisdiction ought to be made upon plea — as the regularity of service of the rules of practice had in view was when made within that Jurisdiction. —

Martin & Ker — } Ct. admitted parties to bring the question of right before the Court by pleading —

Indian & John — } Same order —

Grant & Sheek } Stuart
on Plff. mo. to amend Decln — before plea — new count.
Z. Tidds practice — 653
Rep. de Jurisp. vo. amendt. p. 373.
Symes v. Sutherland —

Sol. Genl. for Defts. Universally req. by Ct. that there must be some thg. in Decln. whereby to amend — new count must be of same nature wt. action brot — Count now demanded is of a diffr. nature — ~~that~~ Note is conditional — the Note declared on is a general note —

Stuart — Deffts. to amend by on the Count in the Decln — no new matter to be introduced, same note better set forth —

Spur
Coldbath

Queen – action on promy note –

Queen – Action is on an agreemt to deliver salt – proof only by one witness – not sufficient –

Pltff – contends that case is a commercial one – proof is sufft –

Myer
Mondelet

Pltff prays Judgt. on proof made –

Young –
Blackwood
&
Claimants.

Stuart
on motion to reject a ~~paper~~ claim filed by an intervening party – objects to claim as being in another Cause & cannot be admitted in this – refers to monies levied on Execution in this Cause on Exn issued – monies now in hands of Offr arising from Estate of Cuvillier –

Ross for Claimts

Richardson
v
Stockwell

Action to recover pos. of a certain lot of land in poss. of Defr –

Sol. Genl – objects, that proof of Pltff. right is insufficient – Writ. do not say whether land is in Beauharnois or Stemmingford

Logan
v
Catchum

On Defrs mo. to ex. witn about to leave the province –

Pltff objects that Defr has not filed his plea & therefore not entitled to his mo.

Defr answers that not necessary to file plea to entitle him to ex. wit about to leave the province. Qr may be done at any time as well before as after plea.

D

Thursday 4th Oct. 1810.

Gaspé vs Baillé — & Brunelle — order that Cause be suspended until Pltff shall have discussed the principal Debtor —

Spurr & Coldbath — action dismissed — proof of undertaking not sufft. proof of it by one Witness —

Vassal & Rea — Judgt —

Careau & Berthelette & Lawson opposts — Interlocy admitting Defendrs to fyle a Renunciation to the Succession of his late father saving all legal objection thereto by Oppt —

Grant & Sheek — no. granted —

Logan & Cathcart — no. granted —

Beaufield & Jackson — ~~action for Lod & Vente~~ rule for proof —

Hayes
v.
Trestler — } On motion by Dft. to file certain papers found by Defndt after filing an act. rendered by him, & which have a reference thereto — & affidavit of Dept. in support of this

Beaubien for Pltff — That app. irregular — papers always in poss. of Dept. it was his own laches not to have produced them — too late to be filed after testimony closed — affidavit not sufficient, does not say that search had been previously made, but only that he had not found them before —

Friday 5th. Octr. 1810

Langman
v.
Beaudouin } Judgt. on Note. —

Auldjo & Maitland
v.
Jno. Blackwood } Judgt. Dismissing the suit —

Brehaut & Co
v.
Cuvillier — } Mo. to amend Decln. to alter name of one of the Pltffs from Samuel to William —

Defendt. objects that this will be introducing a new Pltff — day for trial fixed for trial, this ought to be first discharged & new pleadings admitted. —

Lussier
Choquet
Sanguinet
Gat

On Report of Expert —

Pltff. prays hom. of report —

Gat. object. that one ant. Lasselle, has operated intervs of Antoine Lasselle —

—

Folson
Pease

Action on promy Note —

Defts. object, that there is no evidence to shew that Hunkens who made affidavit of the Debt was legal attr of Pltff — & as Pltff is an alien he cannot obtain a Judt. without it —

Ross for Pltff says, that objection is too late — after plea to merits & came ret docvd for hearing —

—

Morin
Frumentum

Action on promy Note —

Stuart for Dfts — Note is given for part consideration of certain buildings, qch is now insufficient. & prays that Expert be appointed to settle the damages —

Bedard — damages settled by a former report between the same parties —

—

Todd
Roi
Mde. Pensens

Demers
" } On rule on Pltff to shew Cause why answers of Pltff on
Bissonet } certain facts & articles sh^d not be ~~rejected~~ bound to answer over

Bedard for Defts — state that answers are insufficient

Lacoste for Pltff says, that answers are sufficient —

Tuesday 9^th October 1810 —

Brehaut & C^o
" } Pltff all^d to amend on pay^t of Cost & allows Defd to plead
Cuvillier — } over —

Demers
" } no. rejected —
Bissonet

Rev
" } as to appearance by Att^y for a Defd in prison after 2 defaults
McMord } & one day

Decousse
" } Action for house rent —
Turgeon — } Pltff made lease to D^r Decousse — & Decousse made
over that lease to Defdt — & acknowled^d to have rec^d the rent
only question as to validity of this pay^t —

Defd: Decousse had a pow^r of Attⁿ to sublease & receive the
rent, & Defd. p^d to him the rent in consequence —

Pltff. Receipt not given by Decousse as procureur, but pay^t acknow^d
in pursuance of the lease — no reference to pr of att^y —

Deschantel
Denau
Oppos.

On oppos.
Touss.t Beaudry claims £14. 12. 4 – pr. Syndic for part coll.s due for building a Church –
The Seignr. M.r de Rouville claims a preference to the church –

Lacroix
Limoges

On report of Expert –
Defr. suggests that decision of this Cause sh.d be suspended until another cause between same parties be heard –

Woolrich
McFarlane

Action promissy Note –
Plea prescription – Pltff. ans.s That there is interruption
Court ordered that Defr. sh.d appear to be ex.d on oath – did not appear – his counsel objects that copy of that order sh.d have been served upon him – if it be to make out Pltff proof of Interrup.n – q.e has not been made out
Pltff. no necessity of service of an order of Court upon any of parties

Decousse
Turgeon

Lease by Pltff to P.re Decousse 30 Oct.r 1802 pour 9 années from 1 Nov.r 1802 at 50 dollars p.r an. –
Transfer of that lease by P.re Decousse to Defr. 26 Sep.r 1804 to commence on 1.st May 1805 – in q.e are these words – Ce transport fait moyennant et à la charge par ledit S.r Turgeon de payer à la dite Dame Geneviève Decousse par chaque année la somme stipulée au bail susdit et aux termes de paiement y enoncées, en deduction de laquelle ledit Cedant reconnoit et confesse avoir eu et reçu du dit S.r Turgeon avant ces presentes celle de neuf cent livres ancien cours pour le loyer de 3 ans finis
Power of Att.y from Pltff to P.re Decousse 30 Oct.r 1802 – "regir et administrer tous ses biens et affaires, recevoir de ses fermiers, locataires et debiteurs redevables les sommes qu'ils lui doivent et pourront ci-après lui devoir, en donner quittances &c"

Wednesday 10th Oct. 1810

Hays. -
" Trustler } Court granted Defts motion for filing papers -

Vincent -
Lux " Brevé &c } Judgt - confirming the amount rendered

Rea
" M'Neil } Defts all. to appear by Attorney -

Jno. Niess - on mo. for Hab. Corpus. - by Virg

Boston - Jenkins - Pets. not entitled to Hab. Cor. no copy of Com. produced
not confined for any Criminal offence - party in Exon. under writ for ~~not~~ having
refused to open doors to admit Sheriff to serve
Hamb Cr. L. p. 66 - attach.
St. Com.
Cov. Cr. sec. 19.

Beaudry
" M'Gillivray
& others } on objection to service of process at the Counting House of
Defts as their domicile -

Jno. Niess - Virg. - right of attach. in this case is an extraord. right, & if
founded on wrong facts - party entitled to Hab. Cor - ministerial act of
the Judge - right to issue such writ does not belong to Superior Court -
but belongs to this Court when a remedy may be had if done wrongfully -

Todd & Roi & Tavernier

an objection to testimony of A. Cuvillier as being a relation of Garant —

Stuart in support of mo. Mad Tavernier is no party to the action, but called by Roi in another action to guarantee him from Pltff Suit — these cases not joined —

Code Civil. Garants.

That if causes were joined, still mo. is regular — this is a personal action — & what is done between Pltff & Defts does not entitle Garant to take part & cause in the Suit. —

art. 12. Garants

Where party has acted as an Agent, for either Pltff or Defts. he may be called upon as a witness even if related to either of the parties, he is thereby a temoin necessaire. — cites. Rutd jo. v Sidan. & Claus. offs in Q. B. Mr Johnson was heard as a witness

Ogden for Pltff. The actions are joined & make one action in consequence of the pleadings — & no relation of either of the parties can be admitted as a Witness. The Garant. produces a relation — & the Defend. then afterwards offers the same Witness —

Stuart — Objn — is not that the Witness is related to a party in the cause but to a person having an interest in the Cause, as these two causes have never been joined — this has never been rd as an objection to the competency of a Witness. —

Olofield & Park

on Defts petition to enter appearance after 2 defaults as Summons was not served on him personally but during his absence from the Province —

Ross for Pltff. says, that process was served at the usual

domicile

& place of residence of Defdt — & according to ordr. of 1785 he is not entitled to come into the Cause —

~~Stuart for Defdt~~

Desrivers
v
Bissonet

action on Reliquation —
Defdt. pd. nothing

Charland
v
Quenville

action to account —
Plff moves to discont. part of his demand
in damages

Indian
v
John —

cont. to 12th for proof —

Dupaut
v
Pickle
&
Barsalou
Gar —

action hypoth. — Vijé —
Defdt. calls in Garant — M. resp.
Garant denies, Plff nonsuit of action — Costs —

Denau
v
Cuvillier & Co
&
Labelle & Sain

attach. on Judgt — Lacroix —

Thursday 11th October 1810.

On Petition of John Niss } application for a Habeas Corpus denied —

On Petition of Leblanc. } For causing in Creditors of the Succession in order to make distribution of the proceeds — Rejected as it does not appear that the Estate is Insolvent —

Cook } vs Taylor } Upon mo. to amend by changing "Serjeant in Royal artillery" to "Innkeeper" — on ground, that Defendt. stated himself to be a Serjeant in Royal Artillery in the deed upon which the action is founded, but two days before this action was instituted he changed his situation by becoming a Tavernkeeper

Stuart — Serjeant in Royal artillery is no legal addition — nor is it consistent with the matter of fact —

Le Provendier } vs J. Bte Castonguié } Action of damages for defamation. —

Jean Marie Mondelet — con. le Def. depuis 1790. ou 1791 — Dem. alors à Beloil dit temoin a St Marc — a eu occ. d'entendre par. fav. de lui & de l'emp. dont il etoit très satisfait — rien ent. contre sa loyauté — il etoit Lieut. de milice dans une comp. à Beloil — con. le Dem. depuis plus. an. en ville — rien entendu dire contre lui — Que y a quelque tems a vû le Def. ivre dans la rue qui insultoit ou maltraitoit de paroles le Dem. — Que quelq. tems après le Def. fut amené devant le tem. par prise de corps pour avoir battu un autre,

Alex. Henry. Knows P. for a number of years — has been 2 years in employ of Def. — never heard any thing agt his character, considered him as

an honest man & a good Subject –

Franc. Mathurin – com. les parties – s'est trouvé pres de la maison du Dem. le 22 Mai der. ent. le Def. dit au Dem. qu'il doit un traitre à son pays & à son Roi – qu'il a voit qu'il avoit reçu des papiers de la France & qu'il le feroit chasser du pays – il y avoit un grand concours de monde causé par le train que faisoit le Def qui étoit ivre – que ces injures pouvoient causer du tort au Demr – que le Dem. a rep. au Def. de passer son chemin, qu'il n'étoit qu'un Sallaud –

×

Lucille Def. étoit parte pres du marché neuf ou on vend le poisson & les parties étoient pres l'une de l'autre – Que le Def. a com. de maltraiter la fem. du Dem. en la traitant de putain – que le Dem. l'a pris par le bras lui disant de s'en aller, qu'il n'étoit qu'un sallot et un impertinent – que la dame le Def a dit, vous etes un traitre a votre pays, tu a reçu des papiers de France & moi

que la fem. du Dem. a traité le Def. un vieux cochon – & un vieux sallaud & d'aller en allen – le Def. étoit bien en train –

Pre Desjardins Que vers le 22 Mai vers le 6 & 7 heures du Soir il a arreté pres de la maison du Dem. com. il ent. un grand bruit – c'étoit le Def. qui avoit diff. avec un nom. Lavilotte – le Dem. s'en fut pour retirer Lavilotte d'entre les mains du Def. qui le battoit le Def. a dit au Dem. qu'il étoit un Sacré mauvais francois qu'il faisoit tort à son pays & à son Roi – qu'il avoit des connivances avec les fr. & avoit reçu des pass. des Etats Unis qu'il avoit vû étoit en liaison avec les Bastonais &

faire venir les fr. ici — qu'il y avoit beaucoup de monde assemblé par le bruit — & que ces injures ont jetté un soupçon contre le Dem. dans l'esprit du tem. —

X

Que le Def. sortoit de chez Dame Lavicolette — que le Def. frap. Lavicolette — & le Dem. l'ayant retiré d'entre ses mains il dit au Def. vous êtes un vieux insolent de maltraiter cet hom. que le Def. a répondu comme il vient de dire. —

Jos: Roi — Que le 22 Mai der. il a ent. du br. chez lui qui se fais. chez le Dem. et y fut, et a vu les par. en querelle — & ent. des injures de part & d'autre le Dem. traitant le Def. de vieux Sallaud & mauvais riche — & le Def. traitant le Dem. de mauvais fr. & mauvais sujet — que Mad. P. s'en est mêlé & a dit vieux Sallot mauvais riche allez vous en — le Def. lui a rép. sur le même ton —

X.

Que le Def. étoit tout près de la maison du Dem. et il paroissoit au tem. qu'ils se disoient des injures autant les uns que les autres — que le Def. étoit saoul — qu'elles parolles alors proferées ne faisoient aucune impression sur le tem. ni aucun tort au Dem. dans son esprit — c'étoit des injures reciproques — Il ne croit point que le Dem. en ait souffert le moindre dom. aux yeux du public —

Henry Lesperance — Que dans le mois de Mai der. il a ~~ent~~. le Dem. faire des repr. au Def pour avoir bat. le nom. Lavicolette — le Def. a dit allez vous en, vous êtes un mauvais fr. vous recevez des lettres des fr. & vous êtes un mauvais sujet — que le Dem. trait. le Def de vieux Sallot & mauvais riche — que le Def. étoit saoul —

Michel Vincent. a passé pres de la maison du Dem. le 22 Mai dernier & a entendu du bruit – qu'il a vu beaucoup de personnes assemblées et le Def. qui maltraitoit le Dem. disant, qu'il vouloit le battre – que c'etoit un sacré chetif qui ne valoit pas la tappe —

Claude Thibault – Que le 24 Mai der. il fut chez le Def. com. Con. pour arreter le Def. en vertu d'un prise de corps – alors le Def. a dit c'est sacré ce tout en travers de Prov. qui a fait cela – Savez vous qu'il a des con. avec les fr. qu'il a reçu des pouv. des fr. & vous les avez vu vous-meme – que le tem. a dit savez vous la corvez. de ce que vous dites la, si ces paroles sont vraies vous lui mettre la corde au Col – prenez bien garde – que le Def. a dit qu'il savoit bien à quoi se tenir – & la meme continué la meme convers. le long du chemin & le tem. a conen que les par. vouloient faire passer le Dem. comme un traitre à son pais – Que le Def. est un hom. riche, & c'est bien –

moi je n'en ai rien dit à la observé au Def.

×

Que Mr Trinque etoit present avec le tem. & a tout entendu – C'est le temoin qui a fait rapport de cette conv. du Def au Dem. & que c'etoit son devoir – Qu'il n'a pas com. le pr. poursuite – mais lui en a dit les consequences – que c'etoit un affair interessant, le gouvern. n'auroit que faire des Juges ou Juges à Paix savoir cela & vous serez vous meme poursuivi –

Franc. Trinque. Que le 24 Mai der. fut chez le Def. avec le der. tem. – que le Def. alors dit c'est le bougre de Prov. qui est la cause de cela – il a ajouté. il doit se rappeller qu'il m'a montré une lettre qu'il a reçu des americains mais n'a rien entendu des Franc, ni que la lettre contenait aucune chose des Fr. – qu'il fut la comme ami du Def. pour arranger l'affaire entre le Def. & Lavioletta – Qu'il est un peu sourd – et il auroit pu dire des choses qu'il n'a pas entendu –

×

Qu'il y a 40 ans qu'il dem. à montreal – con. le Def. depuis 20 ans. ne peut ni lire ni ecrire – Que le tem. sait lire & ecrire – Que lorsque Thibault est

arrivé chez le Def. il n'a rien dit du tout - ne a-t-il fait pois? le Def. ne a-t-il vu aucune resistance de la part du Def. ni menaces de la part de Thibault de le garotter - Que l'on parloit assez haut pendant tems qu'ils etoient chez le Def. pour entendre tout ce qui se passoit - & croit que rien ne s'est passé sans qu'il l'ait entendu - ils sont partis tout les quatres, le tem. & le Def. marchoient ensemble, Cl. Thibault & Laviolette alloient devant, & il n'a pas dit une parole par le Def. ni eu. aucune proposition de la part du Def. pour un arrangement Que le Dem. a dit au tem. qu'il n'auroit jamais poursuivi la presente action s'il n'eut pas été conseillé par Thibault - Qu'il a aucune mauvaise opinion contre le Def. pour tout ce qu'il a entendu avoir été dit par le Def. contre le Dem - Que ce Def. prend de la boisson quelquefois, & en a du regret après -

Defence

Pre - Beffre - marchd. a St. Constant - a resté plus. ans a Montreal - con. les parties ensemble il y a environ un an - lorsqu'on parloit des Francois - on disoit que les Franc. avoient été battus - le Dem. a dit ce n'est pas vrai, j'ai une lettre d'un de mes amis dans les Colonies, & tirant une lettre ou quelque papier de sa poche il en a lu quelques mots pour dire que les Frs. n'avoient point été battus par les Anglois. —

Ch. Court

Verdict for Plff £7. 10 & all costs -

Cameron
vs
Leishman

On agreement respecting a lease. —

Defendt. has denied the agreement — ~~Plff~~ has been exd. on facts tant — the other testimony

1 Proc. Cas. p. 137.

Ross for Defdt. Action to set aside a lease made between parties not before the Court — objects to testimony of Gray, Guffie & McArthur & moves that it be rejected — because it is verbal & cannot be admitted agt. Defdt. bases the paper produced by Gray is not signed by Defdt. & cannot constitute a con. de p. fac cent. so as to let in the testimony adduced. —

Sol. Genl. The Defendt. has signed a paper conts the agreement which the parties had in contemplation to enter into at the time the leases were made by Ferguson to them, & the instructions gh were taken from them by the notary on the letter of Consent from the proprietor —

Verdict for Plff

Monday 15. Oct. 1810

Kemp
Serjeant } on report of arbitrr

1— Objct: by Defts. that witss heard by arbitr were not sworn
2. That 3 arbitrs did not hear exps. of witss but named after, —

Plffs — Report sufficient —

—

Hagar
Jas. Lindsley. } on Plea of abatement
— That Defts. name is Fredrick Lindsay — pyts. Ext. bap.

Plff. says. that Defts. sues by name under wch. he is sued —

—

Watts & al
Hall } action of assumpsit for goods.

Ryon for Defts. That the Person who shipped the goods — are bankrupts
now manufacturers of part of them call on Defts. for pay. of them.
That the Invoice of them goods is made by Bentleys to Defts. at his
risk — submits that Plffs shd. give Security if they get the money —

Ross for Plffs — Plffs are not bound to give Security — are Trustees &
must pay the money when recovered — That Bentleys are not Creditors
of Defts —

—

Forlaw
Bowie } parties agree to the hour. of report

Davis.—
Chapman } Nothing s^r

Logan.
Taylor. } Noths s^r

Busby
Fire } An objection to regularity of service —
Defend^t. states that Defend^t. had no domicile within this District but lived at Kingston in Up. Canada, at the time of the service of the process — Testimony of the bailiff ascertain that the place of service was not the domicile of the Defend^t — as the transient passage of a person from one place to another does not constitute domicile — Real actual residence, & the intention of living at that place are requisite to constitute a domicile — cites. Repert^e v^o Domicile
Pothier — do
Domat — do

Pluff. Defd. is a dealer in timber — came to Montreal to sell it, & hired a room in a house here during his residence in order to sell it — Process of attach^t under y^h the raft was seized & at the time the Defd^t was here — & the service of the writ was made to the father in law of the party at that house —

Defend^t. cites case of Farrar v Storrs — where service of process made at a house where Defd^t had carried on trade, after he had left it — was set aside.

Nitchcock
Forbes — } Noths s^r

Jarry
Barber
Donegani
Normandeau
Dupéré Gt

action pétitoire —

Stuart for Defts. objects —

1. That from Plffs. own statement, he had not acq. a suffte title has had no delivery — & the right of action if any belonged to Dupéré.

Poth. Prop. Nos 281. - 286

Repertre vo Revendication

The Garant, Dupéré, comes in & says, that Plffs. had right to their action Papers. Respre vs. Revendication — Poth. tr. prescrite — Plffs. had jus ad rem, but not jus in re —

The Sheriff title gives the Defendt a right to the land in question & there is nothing to impeach it —

Ross for Plffs. — action by Plffs. is rightly brought — the Plffs were never in poss. but Dupéré was — Plffs have the rights of Dupéré may sue them as Defendt who is a wrong doer — That Dupéré after such sale could not bring the action, as he had no right left —

Bedard for Garants — says that Defts have no right to ground claimed —

Stuart — in a pétty action, the Defdt. is presumed the legal possessor till the contrary be shewn —

— —

Jarry
Barber

Defts. do not appear —

Andrews & Gillespie

on Statement produced by the parties —

Racicot
vs
Stanfield
& M. Kay.

action to rescind a lease made by Plff to Defs. by reason of infraction of clause in lease not to sublease —

Plff says, that Defs. did sublett to Munro Kay, & Plff is therefore entitled to claim the rescision of the same as with a view of exp. lease
vo. Dan. vo. bail. sec. 12
Lacombe v. bail. Sec. 7. —

Defend. says, 674. vo. Hypoth. Repsn

DON MOL LONDON

Tuesday 16th Oct. 1810

Donegani
vs
Normandeau
& Dupéré

Defend. exception dismissed, & a day for proof given — the question of tradition not thought necessary — as the Seller by the deed of sale made over to Plff all his right, droit & actions, & gave the party a right to put himself into the possession — & the confirmation of this right by the Garant in the Cause confirms this right agt the Defts —

Hagar
vs
Lindley

action dismissed — as the Plff has not proved the Defend's name to be James. —

Racicot
vs
Stanfield
& Kay

Parties admitted to proof —

Wagener
Scott

Action y damages for driving agt. Pltff Calash overetting it
& ~~hurting~~ breaking Pltff leg—

John Teasdale — In July last wt. wt pltff in his Calash to take a ride
& returning up the L. Sub. saw Dft. coming towt. in a Calash, callt. out to
him to stop — as from the direction he was taks he was coming right upon the
Pltff. horse — but before any thing further could be dt the Pltff & W. were
thrown from Calash into the street — that Pltff did every thing to avoid the by
driving his Calash into the gutter & leaving sufft. space for Dfts. to pass —
that wheel of P's calash was thrown off — Pltff was hurt — had it been
offs. horse they must have struck agt it — one wing of Calash broken —
Pltff callt. in a Surgeon — & was detained from following his business for
some time — his thing was badly bruised — Pltff is a gardener — loss of
his time was equal to 10/ a Day —

x

That the stones of a building was on the side on wh Dfts was to pass
but there was sufft. room left for him to pass — that Pltff went as near
the houses on the other side as he could —

~~Conrad Hopple~~
~~Colin Campbell~~ saw Pltff going up L. Sub. & Dft coming down — Pltff drove
close up to Ds. horse — Dft. kept straight on — Pltff. calash was overturned
Wheel torn off & Pltff thrown into the Street — saw several calashes pass
in that spot the same day, & D. had room to pass between P's Calash
& the stones of new building on the other side the Street — The wheel next
D's carriage was broken off by the axle tree breaking —

x

Both parties were driving nearly at same rate — did not hear any
one call out to Dft. to stop —

D.. Ross. That on a Sunday about 8th July last, met Def in his Calash — observed that D. drove in a very awkward manner & at a smart trot, so that he pd it necessary to get out of his way — cannot say whether he met the D. going up or coming down —

He judged from the manner he held the reins, that he was an awkward manner —

Dr Loedel. On July last was sent for by P— found a considerable contusion on his leg & thigh — attd him 4 or 5 days — till convalescent, after wh he heard no more of him — conceives it wd have req. two weeks more to enable P. to work as usual —

Myth charge a guinea for his attendce —

Fr Asselin. worked for P. in July last — P. was not able to work for 6 weeks from the blow he rd — a gardener might earn 10/ a day at that time of the year — went for Calash next day — observed that the Ash tree was broken & the wood sound —

Defence

J. Bte Lafricain, a vû passer le D. au petit trotte — le P. allait plus vite — il y avait de la pièce ou le Def. passait, & il paraissait passer aussi près des pierres qu'il était possible — Si le P— n'avait pas été si vite, il n'aurait pas versé — le coup de P— doit dans le gutter — il y avait de la place pour 2 voitures à passer, & s'ils auraient marché plus doucement — le Def. a versé par le coup — & l'essieu a été cassé — le Def. par. bien faché, & dans l'opinion du tems un peu en train —

ne peut dire qu'il ait jamais vû le P. en train — 2 voitures étoient dist. l'une de l'autre environ ½ arp. lorsqu'il les a vû la premiere fois que le roue de la voiture du Dem. étoit dans la ruisseau —

J. B.te Cerat. a vû passer les 2 voit. au fb. 2. que le D. avoit sa f. alloit de front quand il passoit devant chez le tem — étant rendu devant les pieces le D. arreta son Cheval — le P. venoit vite — & a voulu passer et a coigné contre la voiture du Def. a don. un coup de guide dans le mom — pour passer — la voiture a été versée & l'essieu a été cassé — Le a paru au tem. lorsqu'il passoit devant chez le tem. qu'il cond. sa voiture avec tout le soin possible —

x

Qu'il étoit dans la maison, qui étoit la 3e — maison de l'endroit ou l'accident est arrivé — que la roue de la voit. du P. étoit 2 pieds au deca du ruisselet à a qu'il lui a paru —

Daniel Fisher, was near the place where the calashes met — did not see them till after they had met — went out when he heard them partie quarelling — observed one of the wheels of Def.s Calash on the stones laid in the street for building on the side when D. passed —

Fr. X. Bender. That where stones are laid down for building, the space left for carriages to pass is so small, that he has often been obliged to stop his own to let a carriage pass at that place —

Verdict for Defend.t —

Letang
Quintal
Fouche
} Nobbs pl.

Leblanc.
Blais & ux.
} action on deed of sale - to recover back monies pd. by Pltff for Defendts. & for which there was a mortgage on the land they sold to the Pltff, & also to pay Rempts of Seigr.

Beaubien for Defts. The Pltff is not injured as mortgage Creditors agree to take their money as the pay. becomes due to Defts.

46th.

Bedard for Pltff. There is evidence of the exist. of the debt, & that the Creditors will not wait the pay. of the sums the Pltff owes Defts. The Defts are stellionataires, in selling a thing as clear of incumbrance which they knew to be otherwise - bound to reimburse the overplus of the monies the Defts owe on the land beyond the price de vente - cites. Denizt. vo. Stellion. Laurentie vo. Stellion -

Dec.
Laurentie.

Blackwood
Cuvillier
Ld
} on rule to shew cause - why a Ca. Sa. shd. not issue to satisfy Pltffs Judgt. in consequence of a discussion of their property -

Ross for Defts

1 & 2 Pltff not entitled to a Ca. Sa - the Declr. do not shew that parties they are parties & traders - Defts state to be auctioneers & brokers - The action is for monies had & rec. & not for goods sold as stated in Ordr of 1785 -

3. Pltff has not made a sufficient discussion of Defts property - property in the hands of Trustees - ought to have been discussed - Sale of timber. -

Shay- states, that Defts. had a quantity of timber at the water side all last Summer —

Ogden for Pltff — The answers of the Defendts shew they had no property except Civilliers who wd make no answer when called on for that purpose objects on an part of testimony by Gn — a title is set up to lands by Defts —

The property in the hands of Trustees cannot be attached by Pltff so adjudged by this Court —

As to timber — Pltff advanced £100 on Contract — wood rec? did not pay the
As to other timber the Contract was at an end — & Pltff not bound to take it —

Denan
vs
Civilliers &c } Pltff asks Judt —
noths pd

Cavernier
vs
Sanguinet } Judt to be drawn up —

Gorions
vs
Lebeau } on promissy Note —
Noth? pd submits case —

Jackson
~~Jackson~~ }

Beardsley
vs
Gillis — } on service of Summ. by Coroner addressed to Sheriff
Bruce moved that Defts be compelled to take off pyper an exception to the Service — as ought to have been made by motion under rules —
Stuart — for Defts that point regards the Jurisdiction of the Court ought to be made by plea —

Raimond
v.
Nollet } action of Damages for Defamation. —

Dol. Gen^l. Defend^r. not guilty — he retracts the words before the person to whom he s^d them left the room — no room for action —

Perras
v.
Taylor } on question of right of Evocation.

The Judg^t. of the Court of Appeals has settled the right of Defend^r but has left to the Court to give a Judg^t on the evocation after certain papers shall have been filed — Refers to the Judg^t in the inferior Court ordering —

Ross for Pl^ff. says that Defend^r cannot except to the Jurisdiction of the Court below, as McKerkar was a party to the Judg^t upon wh. this present action is founded, & Taylor the Defend^r has purchased McKerkar's property which was bound to the pay^t of the debt demanded, since that Judg^t. was given — and cannot evoque the Cause more than McKerkar could have done —

Stuart for D^fr. The evocation must be granted or not upon the face of the demand, & the Court cannot look beyond this without prejudging the D^fr. right —

Archambault
Allard & Nolte P.

Hutchinson vs. Livingston } On rule Nisi, why bail to the Sheriff shd. not be exonerated on giving special bail to the action. —

Ogden for Pltff.

Says he is not bound to take bail to the action after a second default entered agt. Defdt —

Sol. Genl. for Bail — says there can be no defaults agt. Defdt. on Capias & bail are allo. to come in at any reasonable time —

Logan vs. Cat-chum } Question respecting Costs —

Pltff sued out attachment & seized three Cribs in poss. of Defdt it now appears that only crib belongs to Pltff, & Defdt. had in poss. the other 2 cribs are now delivd. up. & claims costs —

Defdt. states, that under the plea filed, all the three cribs must be adjudged to the Defdt — as Pltff has made no proof whatever in truth 2 cribs only claimed & security given for them — the other two wrongfully seized —

Oldfield vs. Park } On Defendt. Petition to enter appearance to action after two defaults, by reason of his absence from home at the time of the Service of the Summons —

Stuart for Defdt. ols fr. law allo. party in default to come in on paying Costs before Ordr. of 1785 — extended by St. 1801. ch. 3. su. 5. It is in proof that at the time of service of the process the Defdt was not in Montreal, but in the United States —

Rots. for Plff. Service regularly made at Domicile —

Wednesday 17th Oct. 1810

Olofield
Park. } An Defdt petition —
Petition dismissed with Costs. —

~~Alexandre~~
~~Dalain~~ } —

Beardslee
Gillis — } Plffs motion granted

Hutchison & Torrance
Livingston — } The Defdt admitted to perfect bail to the action — on condition that the Bail bond of the Bail to the Sheriff shall stand as a Security for the payment of such debt & Costs as may be recovered by the Plff from the Defdt — also upon pleading an issuable plea & paying all the Costs accrued to the Plff on the assignment of the Bail bond — upon performance of which condition all further proceedings of the Bail to be stayed

Artemas Lockwood
James Brown — } on Exception —

Benjamin Wales
James Brown } do —

Hazen
Hindman } Instd

Butler
~~Buckley~~
Rowley

On rule Nisi — why Defend^t shd^d not be discharged from his arrest —

Mitchel
Clarke et al

action on assignment of Bail bond —

Sol. Genl. The Pltff has proceeded on his action agt. the Defend^t in his original action to Judgt — which is a waiver of the security under the bail —

Cont^d till to morrow —

Alexander
v
Desiards

action of partage —

Defend^t agree to a sale of real property at Church door instead of a licitation in Court to prevent expence —

Halls.
McKay

action for goods Sold & Deliv^d —

Bolton for Pltff — muskrats skins sold at public Sale by Isaac the auctioneer —

Ross — for Defd^t — Sale was never real — the Skins adjudged in joke & before the party saw the article — The party has a right to recall his bid 3 T. Rep. 148. Paine v. Kay — — There was no delivery of Skins —

Hannah
Jackson

action on deed of Sale —

Plea of defficiency of land — Survey ordered — ~~Report now made~~ rule for report extended —

Beaubien
Beauchemin

action for goods sold — Defd^t sum chay^d as bal^{ce} of ancien compte, not prov^d — Int. also chay^d from year to year — no proof of promise to pay interest —

Beaubien for Pltff. Proof sufficient — refers to testy of Lapensée & Laberge —

Atkinson
Stockton } action for damages on non-execution of Contract to furnish Staves —

Ogden. Plff has shewn no right prosecute Stockton alone she is stiles widow of John Kay, not shewn that Kay is dead There is no proof of price of Staves at Cape Rouge — only one wit: to the fact. —

Stuart — Obligation joint & several — & may be maintaind agt Stockton alone — there is proof ouff. of the death. —

Carter
Chepal

Thursday 18th Octr. 1810:

Raymond
Mallet } Decft. for 8/- & Costs as in Inferiour Term —

Bernard
Poirier } Action Dismissed

Coubelee —
Archambault } Action for exhibition of Titles —
Defr. says damages of £10 — as claimed not made out in proof —

Cuvillier
Hawley } Action to recover money pd. by Plff for Defr.
Plff claims price of Staves as in June 1807.
Defr. says. one half Staves deliv?. in Time — one half in Augt. whole damage £100 —

Reiter
Aiken } Plff to take his Judt—

Trinque & Castonguè

~~Bouzy~~
Bouzy
&
Ve Bouzy
Archambault } Dft. says — there is no proof of their being in possession of the land

Morrison
Raymond } On moyens de faux — . —
Dey adered for proof—

Monk —
Lagorgendiere } Action to make a fence between adjoining lands —
Stuart for Dftt.

Plff has no right to demand a new fence, but to contribute towards the repair of old fence — cite art. 209. 210 — of Coutume —

209. 210 Plff cannot say that Dfdr. is bound alone to make any fence — or that he can have a choice where that fence shd. be made —

Ross — art. of Cout. not applicable — fences must be kept up at all times —

Thursday 16 Oct

Monk
Lagorgendiere } Exception dismissed —

Friday 19th Oct. 1810

Lussier vs Choquet & Sanguinet — Judt

Riché vs Campeau & Crevier — Testimony of Defts relation to prove usury rejected —

Todd vs Roi & Taverne — Curillier admitted as a witness.

Hagan vs Hudson — Judt

Saturday 20th Oct. 1810.

Blackwood vs Curillier & Co — Rule absolute — Defendt when called upon to say whether he had any property &c he would not answer

Cameron vs Leishman — Judt

Mitchell vs Clarke et al — action on a Bail bond — There was a question whether the Plff could prosecute an action of the Bail after he had taken his Judt. of the principal — This principle was controverted by the Court & settled that a debt must be established of the principal before any Judt can be given of the Bail —

Busby
vs
Vze —

On service of process —

Cases under deliberation

Lacroix
vs
Limoges

On report of Experts —
Nothing P. of. same — — To be hom. —

B. Hall
vs
Alex. McKay

Question respecting a sale at auction. —

Only question is — if the ~~act~~ 2nd of the ~~contract~~ that it was no sale & never meant as such, vitiates the contract — whether the principal is bound by this act —

See Encanteur +

Denaut
vs
Cuvillier
Labille T. Saisi

Jn. Bte Leblanc
&
Jos. Blais

Ct. Perras
Jas. Taylor

Geo. Watt et
Jacob Hall

The sum in dispute arises on the Shipment to Defdt. by the Bentleys in april 1809 through medium of the Newmans, & amounts to ~~£360.14.~~ £350.14.1 ~~Ster.~~ or £311.1.7. less charges &c — exh. No 6.

In Bentleys letter to Defdt. of 15 Decr. 1809, they say, they had proved on Newmans Estate for the amt. of the Shipment by the active £311.1.7 — leaving as they say, that Defdt had much of this property in their hands — but still with a view of looking to Defdt. for the deficiency -- in consequence whereof the Bentleys rec.d 3/4 in the £ — amounts to £51.16.11 — see Defdts exhibit No 8. 10. —

Now it is pleaded that, by the bankruptcy of the dividend the Bentleys waived their recourse of Defdt. as they considered the Newmans as their Debtors —

February Term 1811.

Friday 1st February 1811.

A Commission appointing Fredk William Ermatinger, Esq. Sheriff of the district in lieu & place of the late Edwd Wm Gray Esq deceased, was read.

Saturday 2d February. 1811.

Judge Ogden absent.

Cuvillier — McDonnell

Mo. to dismiss cause for want of proceeding during two terms

Pltff — That since last Term there have been proceedings by examining a witness under a petition & order of One of the Judges of the Court.—

Defndt. That makes no proceeding in Court agreeable to the Rule —

Hamilton — Herman

Act passed by Belanger instead of Lee, not pf. and declared on as by Lee — mo. to amend and insert name of Belanger in lieu of that of Lee — there is a proofst in Curia of the deed & shewn it to be same —

Deft by Ogden — He has pleaded that there ~~not brought into Court~~ is no such act as that declared on — as he has only to look to the deed declared on & not that brot into Court — cite case of Poulin v Duplessis, where the pleas of exects the act was amended as material —

Pltff — The alteration is merely of a Clerical error, & requires no alteration

of the plea, the Costs whereof he ought not to pay, but merely the costs of this application —

Hamilton
v
Eager — } On Bill of Exchge — Judgt to be entd. } by consent —

Wagoner
v
Scott — } Mo. for New trial by Plff. —
Objection to regularity in not giving sufficient notice thereof
This being agreed to by the Plff — the rule was discharged

Monday, 4th. Febry. 1811. —

Absent. Mr. Justice Ogden —

Langworthy & Day
v
Howard. — } The order for discharge of Defendt granted. —

Hamilton
v
Hermans } application to amend granted on payt of Costs of the application — not for a new plea — as it is not necessary. —

Decousse. —
v
Surgeon } Judgt for £6. 5. — costs as under £30. —

Perras.
v
Taylor } Judgt admitting the Evocation. —

Longueuil
Cheeseman

Action on a promy Note. by Indorsee ag Maker
Indorsment made by Payee by making a mark thereto. therefore is not negotiable.—

Georgeon for Defdt. by 34. G. 3. ch. 8. 1— Indorsment req. to be made by writing of the party—

Sol. Genl That law respect only note made by a person who cannot write, & not Indorsments made the mark of Indorser—

—

Beardslee
vs
Gillis

Bender— action ag Defendt as ~~Security for Debt of another~~ Bail for one Robjas. Plff Debtor—

Stuart for Defe— The Plff has proceeded to Judgment ag the original debtor, & cannot have this action.—

—

Lanctot
vs
Lanctot

To annul deed of Donation for cause of Ingratitude.—

Sol. Genl This is a Don. a rente viagere— is not the Donation upon which the Cause of Ingratitude, ~~but~~ as there is a consideration given for the property, and is more a Sale—

Sic argue. Donation
Ds Janvier

Bender— Fr. dr. ve Revocation de Don.
Poth. Don. entre mfs. p. 506— 4th pt. de Donations onereuses to a certain extent are liable to Resiliation.—

—

Caron
vs
Rochon

Action to obtain poss. of a lot of ground devised to Plff. wife by the usufruit whereof was

Bedard. for Defdt— He is not the heir of the Testator but only a

a legatee – That Plff has never had deliverance of the legs in question – & therefore not entitled to his action – Dfd. holds only as Legatee, & as having purchased the right of the widow of the Testator – That demand of the legs must be made of the heirs of the Testator – as plff is not saisi de plein droit. – art. 295. Cr. Com.

2ᵈ q. If action is ouvt. to obtain delivery of the legacy – this denied. as it is not agt the heir –

Rolland for Plff.

Both parties are entitled to claim under same will – and it is not necessary to call in the heir, only when he is a third person, in order to contest the validity of the will if he sees fit – here there is no room to call in any person, as the Testators two Children, who are his heirs and legatees hold the same property under the same right – Fr. Substitn Sec. 3. art. 1. –

Bedard – The Defends hold the property as Donees of the Testators widow

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Tuesday 5th Febr – 1811. –

Judge Ogden absent.

Longueil & Cheeseman } Exception dismissed, the law not affecting the note signed by the makers –

Colvert – Woolsey – } Question whether bail can surrender the principal after the expiration of 4 days, so as to be discharged from their bail –

See 2ᵈ Sellon. p. 167
1 Tidd – p. 235 –

Chapelle
vs
Holsapple

On note payable to bearer. —
Bayley on bills p. 30. 31. 32

Moore
vs
Lagorgendiere

On Report of Expert. —
Stuart for Deft. The part of Defr. in the fence not ascertained — & it does not appear when duty it now is to repair the fence which is efficient —
Ross — part settled by report of Experts —

Jac. Cartier
Pre Cheveal
Grisé dal Oppt.

On oppositions —
Ross for Pltff. claims preference to the monies levied.
Levesque for Grisé — as tutor to minor Children of Defr. for half of a lands — right not yet open — but must arise — opposition de bene esse — as necessary to preserve the right of the minors — Claims that money be pd to Pltff on giving security —
That Grisé may be prosecuted by the minors & is right to preserve his interest by making his opposition —

Ogden for Pre Deshautels — — proof of discussion of Defr. property to be made

Vigé for Jos. Caravaan — claims under a general mortgage from Pltff — Defpt. has a special mortgage — but ought not to be bound to discuss the other property of Defr. without getting money from the Pltff to make the discussion —

Ross for Pltff — Caravaan's right to the money not open, yet if he take the money, he ought to give security to Pltff to refund it in case the property specially mortgaged sh. be more than sufft. to pay him —

Bricault
&
Bricault

Action en rédition de compte —

Bedard. says, that Defdt. has remd. no acct. of his rights. —

Ross for Dfdt pleads that parties have settled & Defendt. pd. Pltff full amount of his rights — but if he is obliged to account the Court ought to permit him to set off what has been rd. Pltff —

Wednesday 6th Febry. 1811. —

Witness day.

Colvert
&
Woolsey

mo. to surrender body of Defendt by the bail —

Tidds prac. p. 149. —

Contd. till to morrow. —

Dupré
&
McLean.

Plea filed on 3d day at 4 o'Clock where copy had been served at the opening of the Court the same day — admitted. —

Pltff made application that a peremptory Exception filed by Defendt. be taken off the files the deposit of 2 guineas not having been made —

Thursday 7th Febry 1811

Witness day

Dumers
&
Bissonet
&
Longpain
Opps.

Mo. to dismiss opposition — faute de moyens —

Read the Oppost. says he has no other reasons to file than those contd. in his opposition already filed, & that Pltff ought to have taken issue —

Laforce — The Oppost. Pltff says, that Oppt. should have filed reasons of opposition or declare in writing that he had none other than those contd. in his opposition, that the Pltff might take Issue thereon. —

Friday 8th February 1811

Cuvillier
vs
McDonell

On Defendr motion for a peremption of the action —
Court were of opinion that proceedings out of Court are not sufficient to stop the peremption. —

Demers
vs
Bissonet
&
Longtain opp.

Opposition dismissed —

Dupré
vs
McLean

Plea rec. as filed within the time — Court being of opinion that if filed on the 4th die post —

a Plea of Exception qr. is a temporary bar to the action — as term for payt — not requisite to deposit 2 guineas wt. it under the rule —

Bricault
vs
Bricault
&
Meunier

Evocation dismissed —

Bricault
vs
Bricault
vs
Bricault opp.

Evocation dismissed. —

grant
vs
Sheek

action on a promissory Note — Trial by Jury —
Note in these words —

On this Note £25 were paid on account — Defendt refused to pay balance, as wood had been carried off by certain other persons, & Defendt thereby rec'd no value. —

Pltff objects to return of Com. Roy. — 1st as there is no return to the Commn — and 2. As the names of Witnesses were not given at the time the Com. was sued out, whereby Pltff was prevented from preparing proper cross-Interrog? —

Defdt — No regular practice as to returns of Com. Roy. — in this Court admitted. where in substance it appears that the return has been made — here the witnesses appear to have been sworn & answers made to every Interg — and all is regular, except the usual Indorsment on the cover — "The execution of this writ appears by the Schedule hereunto annexed" — "Answers not annexed to the Com" — but cont? under the same envelopp — As to the names of Wits — they were not known at the time the Com. was sued out — vide J. McDonald & Co v Cavallier & Co —

John McDonald & Cavallier & Co

"It appeared on the inside of the Cover or envelopp, the depositions were all bound together in one bundle, and the Com. with some other papers bound together in another bundle — the whole under the envelopp sealed with the seals of the Commiss?s —

Edw? Doty. says he was Clk to the Com. & took the Depn? of Witn? exd before them — saw them joined together, and sealed up by one of the Commrs — in that state he rec'd them & brought them to this Court. —

The Court were of opinion that the persons named in the Defendant's plea, should not have been exd. as Witnesses, as their names were not given in at the time of suing out the Commission, as being within the Defendt knowledge at the time. —

Saturday 9th February 1811.

Beardslee.
Gillis. — } Stuart for Defdt — Where party not in Court, or in Gaol. Plff cannot proceed — as no person agt. whom to proceed — must go on agt the Bail in case of Defts. default
1 Tidd. p. 156 — 158.

Colvert —
Woolsey } On motion by bail to surrender the Defendt after Default ent. agt. him

Stuart for Plff. It is too late — there can be no surrender by the bail below to the Court, because the bail below is given to the Sheriff and the surrender must be made to him — after the writ has been returned, the bail below must become bail to the action before they can make a surrender to the Court. as it is to them the body of the Defendt is committed by the Court and they are thereupon competent to make such surrender to the Court.

Lodell
Wise — } On oppos. of Defendt — respecting payments made by Defendt on the Exon issued out agt him of £10 &c to late Mr Panet the
Wise. Opp. } Plffs attorney.

Plff. admits pay., but says Defdt. ought to pay costs —

Pltrs
&
Trestler

On an action of act—

Beemben for Pltff

Defendt. contends that he is entatled to the jouissance of the property of the Com. Continuié. — to this Pltff objects, says that 28 & 31 Vic. cap. 230. & 31A Cont. it is otherwise determined also Durand. v Dantour. 5 april 1808.—

Pltff contends that Defdt. should have added the crue to the estimation of the moveables in the Inventory — as he who takes the moveables must pay the Crue — cites Dic. Droit vo Crue.

Objects to insufficiency of proof of debts due by the Community —

That Defendt ought not to have the crue on his preciput —

That Defendt proposes paying only the value of certain real estate, instead of Pltffs share therein —

Debt due to Mr Dunlop — deficit on Murray's debt same on Robertson's — on wages — ascertained by Defts oath —

Ross for Defdt.

Admits the jouissance — as claimed —

That the estimation of the Inventory was made la Crue comprise, which comprehends the full value of the articles — No crue on merchandise —

That debts due by the Community to Engagés - must be ascertained by Defendants oath - but proof -

That debt to Dunlop - is by mistake Orat.d to his credit instead of Schieffelin

The debt due to Murray - is proved -

The Debt to Robertson - also proved -

As to the Immoveable property - admits the right of Pltff, but if Pltff. takes the land, they ought to pay the Improvements thereon

Defendants claim for education & maintainance -

Oldham & Lacroix

On Report of Experts -

Rolland for Defts. objects -

No interest allo to Defendt on pays made by him, but allo to Pltff

£63 - rent - at £9 pan - whereas it was worth £35 pan -

No damages allo to Defendt on his Incidental Demand -

Wheat charged to Defendts ps. by him. qt he can prove but not allo by Expert -

Debts recovered by Jordan as Attr of Defendt not accounted for -

Poitras & Foucher

On Report -

Defts says costs ought to be divided -

Monday 11th February 1811.—

Church ~ Holsapple — Quere as to pay[t] of Note payable to bearer.—
See 3. Bur. Grant. v Vaughan. 1516. Ver—

Beasley ~ Giles — Judg[t] dismissing that part of the plea regarding the Pltff's right of action, in consequence of Pltff having taken Judg[t] of the principal debtor—

Colvert ~ Woolsey — On Defend[t] application to enter appearance & plead— defend[t] app[d] in Court after a 2[d] default, & said that he was unable to appear sooner having been delayed by sickness— of this he fyles his own affidavit.—

Stuart for Pltff— Court has no discretion in this case— the law is imperative.—

The Court upon seeing the affidavit granted to Defd[t] till to morrow to fyle an issuable plea.—

—

Lacroise ~ Denis ~ Bissonet — Action on transport.

Pltff's Judg[t]. agt Pltff. £5. 1. 8. & agt. Bissonet. £12. 5—

Ross for Defd[t] says nothing—

Vigor for Gart— says he ought not to pay costs, as Pltff has not diligence in signifying the transport—
That Gart. never got value for his transport— on 26 July 1805 Lanoye rec[d] amt. of his Judg[t] agt Bissonet, q[r] was the only consid[n]. of transport.

Dubois
Poisson

Action for recovery of money due on Deed of Sale by one Christin to the Defendt and a transport made by Christin to Pliff. —

Ross for Defts says — that he has only rect poss. of half of the land sold —

Lacroix — for Pliff. Defendt has had possess. of the whole & sold it to another —

Indian
Raymond

Exception to service of process —

Rolland for Defts — Sum. was servd on Defendt while acting in a public capacity as a Returning Offer for the County of Huntingdon — Den. vr — assignation — Law requires that he hold open poll during 8 hours, during wh time the Summ was served —

Ross for Pliff. cites Ashley. v White. 2d Raymond. 938 — Defts no helps that service was made on Kings high way —

McGill
Burton

On Report of Surveyors —

Beaubien for Pliff — Surveyors have differed in opinion & a further order becomes necessary —

Rolland for Defts — Not ordered that the line of division between the whole township & Defendts Seigniory shd be surveyed, but merely the points of division between parties lands — The Surveyors differ in opinion as to mode of doing this — & as it appears it cannot be done without running the line of the whole — the action ought to be dismissed

Beaubien for Pliff.

~~Lavoisard~~ } Racicot.
~~Lavoisard~~ } v
~~Lavoisard~~ } Stanford

To rescind a lease —

Bender for Pltff - Lease made on express condition that Deft should not sublet - That Defendt by subletting the house to another person has given up his right, particularly as after the Cause of his loan — Mo. to reject depos. of John Diehl & Mary Diehl as incompetent —

Lavoisard vs Bail. No. 12. 13.

Lacombe. vs Bail.

Beaubien for Defts - That Pltff is not founded in his demand to rescind the original lease between the parties - such under lease good 2 Pigeau. 464. - John Diehl & wife prove Pltffs consent to the sublease - besides Pltff answers on fait & articles —

Bender - denies Pltff consent to the Sublease —

Porteous } action qui tam — on 48. G. ch. 27. sec. 13 & 14. - for penalty of £50 —
Vandendaynn }

Ross for Pltff - states that fact proved as Defts

Lacroix for Defts - the 13. 14 & 15. not in force, as there is a certain formality to be observed - the law not published as directed — There is no proof of Defendt drawing wood on the day laid in the declr 21 Nov. - nor that it was Pltffs property

Ross - Proof sufficient - as to the 21 is about that time —

Webb } action for damages for killing Pltffs dog —
Lewis }

Ross for Defdt - says that proof is not sufficient —

Terrien
v
Longueuil

action to rescind certain deeds of Concession made by Mr Grant late Seignior of Longueuil & deeds of Sale made thereon.

Rolland for Pltff – 6. July 1711 – Concession, made contrary thereto – 15 Mars 1732 – has also disposition to same effect –

Bedard for Pltff – The arrest of 1711 is in force at the Censitaires on their default – same rule ought to extend to the Seigniors – and du Conseil Supr. p. 316. du 10 Mai 1741. rescinding deeds of a Seignior in contravention to the arrets of 6 July 1711 & 15 Mars 1732 – To avoid the law the Seignior granted lands to a confidential person, who sold them to others & among them, to the Pltff –

Domat

Sol. Genl for Deft – That Pltff cannot come at his own act – that is, his purchase from Soubert –

The law of 1711 is obsolete, from the different state of the country The improved state of Country not within the purview of the act it ought to be construed to extend only to the immediate grantee of the Crown – If there was fraud the Pltff has participated therein by acceding to the Sale knowing the Concession –

Traité Normande – Nouv. Denizart – Rep. de Jurisp –

Stuart for Deft – 1st 2. If Pltff has a right to his action – this admits the law in force under St. 24 G. 3. – it is not an Edit, but a mere arrêt – is done in the Executive Council – not by the Legislative power of the King – or is an Interpretation of an existing law – or a regulation for a temporary purpose –

2d. Arrets in question are a mere temp. regulation long since expired as that Concession shd in a year and a day from the passing the arrêt

Below in ordonnance

clear their lands &c — it does not regard all future concessions or tenants —

3. Their Regulations do not extend to the present case — there was no sale by the Seignior — he made a Deed of Concession to a person who made a Sale — in this the Pltff concurred & cannot come ag^t his own act —

4. The Defendants are not the persons charged with having committed the offence charged in the Decl^n ought not to be subject to the penalty of the Law — ought not to be extended —

Cont^d till to morrow to hear Pltff in reply

Tuesday 12^th Feby 1811. —

Foretier & Dulieu } Geo. Ross Jonas Abbot } To look for papers —

Perrier & Dorquenil } Ross in reply —

The arret of 1711 is part of the old laws of the Country in force under the St. 14 Geo. 3. —

Judgt. of 1741. recites, Lettres to arrets of 1711. & 1732. as laws of the Country — it is stiles Ordre

The law warrants the recovery from the Seignior the money he paid him for the land — no fraud on the part of Pltff, as he might have been ignorant of his rights — but the giving of money was contrary to Law, it ought to be restored to the party injured — party in such case may come ag^t. his own act — case Foretier v Seminary —

Defendants as heirs of M^r Grant, are liable for his acts —

That the two acts passed, viz^t. the Concession by Grant to Joubert, and the Sale by Joubert to the Defend^t —

Du. Droit - vs arret - considered as a thing as final & conclusive

Moor. & Struthers } action on Judgt in the State of Vermont - -

Stuart for Defe he was never legally called before the Court at Vermont, was never a citizen of that State but domiciated in L. Canada - Service of process made by leaving it in the highway - No action admitted but from policy between nations - but when rendered contrary to principles of natural Justice, will not be enforced by this Court - -

Sol. Genl contends that he ought to be permitted to go on to establish the original debt of Defendt -

Clement & Robillard }

Johnson & Billings & Johnson

Action for recovery of Staves. –

Ross for Pliff – Has made out his title under proof adduced by Inlews party, whom he admits to have the right –

Stuart for Inlews party – says, that he gave leave to Pliff to cut wood on his Island, but to no other person, therefore now claims the Staves cut that Island by Defnd^rs – q^h is in proof –

Sol. Gen^l for Def^rs – claims right to the Staves cut by a permission from Pliff ~~cut the same~~, who had a right to cut on the Island from Inlews party – M^r Lanfslain under a right from Pliff gave a permission to one Seaman to cut Staves on the Island – promised to give Seaman £20 – & m^r. M^r – refused to pay the money & thereupon Seaman Sold the Staves to Defend^rs –

Stuart in reply – Pliff had a perm^n. as mandataire to cut Staves on Inlews Island – admits 3000 Staves cut on M^r Stuarts land. q^h must be given up to Defend^rs –

Pangman & Beaudouin & A. Beaudouin Opp^rs

On Opposition –

Kolland for Pliff – Claim by Ant. Beaudouin under a Donation made during the action – does not claim as being in possession but as Prop^re under Don – the, is void as to moveables as there has been no tradition Civil – Ord^ce 1731. art. 15 – Denizart. v^o Donation. N^os 37. 38. 39 1. Ricard. 1 part. Ch. 4. Sec. III. dist. I. p. 214. N^os 960. 961. 962. 963. 964 –

Bedard for Def^rs – Alleges that he obt^d the poss. of the moveables at the time of executing the Donation – in q^h case there is no necessity of a list being made of them & annex^d to the deed of Donation –

McGill
vs
Mondelet
&
Knez
vs
Mondelet

On account rendered by Defendr

Beaubien for Pltff. objects to Defendr charges for his labor &c
objects also to his having left sundry articles, such as hay &c in the
poss. of the widow, for wh he is responsible —

Brisset
vs
Brisset
&
Fr. Brisset opp.t

On opposition of Franc Brisset —

Beaubien for Oppt says Pltff made a Donation of a lot of
ground to Minor, brother of Defendr — p. 181. 2e Provb de la Lanne,

Rolland for Pltff. The uncle cannot claim on behalf of the minor, the
father or mother must be named Tutor to claim — the uncle has no quality
to stand in Court — 1. Pigeau. p. 69. art. 1.
There is no acceptance of the Don. wh is essential for its validity —
cite Duplessis —
Rucard. Don. Nos 836 a 864 — None but a father or mother or a tutor
appointed can accept on their behalf — & No. 860 — a Donation by a father
to a minor child without a Curator to accept, is null —
There can be no tradition of the property under such a Donation.

Lilly, Curatr
&
Beach claimt

On Petition for calling in Creditors of late R. Simpson to take
a dividend of his Estate —

Ross. for Beach — claim for medical assistce & drugs — under art. 324
the Claimants oath ought to be taken —

Beaubien for Curatr says, that claimt has not made suffi proof of
his attendance —

Wednesday 13th. February 1811. —

Witness-day

Thursday 14th. February 1811. —

— Witness-day. —

Berthelot v. Munn. & Contra

Action on an award —
The Defendt. pleaded to the action — and after a day being fixed for hearing on the Law, ~~the Defendt~~ moved to be permitted to make an Inscription en faux agt. the said Award, as being admissible by Law en tout etat de Cause. —

Friday 15th. February 1811. —

Indian v. Raymond

Plea of Exception dismissed, as it appeared that Defendt. was not in the actual discharge of his office at the time of service. —

Church v. Holsapple

Judgt.

Watt val. v. Hall —

Judgt.

Moor. v. Struthers

Dismissed — see 1. Camp. N. P. p. 63. —

Holgate v Jackson. } Motion on Defendt affidavit for a fortnight day for adducing testimony —

Masson. Mabbut. } respecting Defendants filing papers —

Artemas Jackson v James Brown } action of Damages for ~~malicious prosecution~~ & false Imprisonment

Jean Le Cerat — Russia — on 2nd Sept. last was charged with a Warrant at Pltff

Thos McCord — Warrt issued by him as a Justice of Peace of ~~Pltff~~ Warrant read — Pltff in cus. brot before him — & committed for trial — No other information rec'd but Defendt to ground the warrant —

G. O. Radford. Gaoler — on 30th Augt. last Pltff was committed to Gaol under warrt of Th. McC. & remained there till 4th Septr. when he was discharged by H. B —

Jn Le Cerat — took Pltff at Arundel about 15 leagues from here on 28 Augt. last & brought him to town & carried him before Mr McCord a Justice —

John Reid Clk Crown — that on 5th Sept last a Bill of Indict. was prest. agt Pltff from Wales for stealing paper property of Defts — name of James Brown alone named on back Indictment — Bill Indict. read. — Notice Indictment contd blanks — in all the matters regarding quantity of paper &c to have been stolen from Defts —

John Cheshire — Knows Pltff for 7 years — Has had transactions with him as a partner as one of the paper Mill Co to amount of £1000 — Never heard any thing agt. Pltff character, always found him an upright man in his dealings with him — when heard the accusation of him did not conceive him guilty of it, but thinks it might have brought disgrace upon him — That Water Co was then possessed of considerable properties to amount of about £2000 but cannot say.

Walter Ware. Paper maker, was connected in trade with Pluff as one of firm of Walter Ware & Co — That on 1st. augt. last Pluff was carrying on lumber business Has known Pluff for 15 years does & then always supported chr. of a very h man — That Deft. was himself a partner of Pluff. in s[d] business from year 1807 to 1809. — Knew Pluff before he came into the Province several years — was a paper maker & had a good character — Supposes that Pluff must have suffd. in his character by being accused of being a thief —

Jeremiah Meacham — Is a Sub. Sr. Knows parties — has known Pluff about 6 years — does & then of his being as a paper maker — saw Deft. a augt. before Pluff was arrested — That in augt. last Deft. told Pluff she had inform[n] — That Pluff & Wales had stolen paper from his Mill — That he intended to apprehend them — told Deft. not to proceed until he s[d] see him again — Pluff was appreh[d] during W. absence — afterw[ds] saw Deft. & told him it was a serious charge & w[d] cost him a good deal of money — Deft s[d]. it was a thing came, & w[d] cost him nothing — suffd. his character by charge brought agt. him —

John A. Ackart — Lives at augusta — has pluff for 2 years knows a good char — a day or 2 before arrested. Deft. told him upon some enquiry reports some affidavits taken before Sq. Hill — Deft. told him that Pluff & Wales had not only stolen paper from by the quire, but by the load — upon qh. W. observed if

J. Bte. Arvon de Blondin — Con. le Dem. que dans l'hyver 1809. 10. a hyverné au lac Chaudiere avec le Demt — a 30 lieues d'augusta en chantier — qu'il a passé tout le mois de Mars 1810 avec le Demt — lequel avoit été absent quelques jours vers le fin de fevrier —

Peter Benedict — Has known Pluff for 5 or 6 years — a good char — a paper maker —

R.t McKenzie. Knows Dft. in Montreal. has a shop & carries on business extensively.

Alex.r Aubijs. same evidence —

Stuart for Defd.t — says, this is not an action for false imprisonment, as Defd.t was imprisoned under legal authority — & therefore the evidence adduced is insufficient — .

Bull. N.P. p. 22.

Salwys &c — on action for malicious prosecution — q.r this evidently is, & the evidence adduced not applicable to it — p. 1063 —

Has shewn no malice, & want of probable cause — has not produced the information given by Defd. to shew this — no onus on the Defend.t — Esp. N.P. 529 shews what kind of evidence to be given. —

Hon.ble Court were of opinion that there was sufficient evidence to oblige Defend.t to answer —

Defence

Jas. Christie. Has been in Defend.t service since Octr. 1809, & employed to superintend the paper M.l at St. Andrews — Defd. was sole propr. from autumn ~~octr.~~ 1809 — Defend.t came to Argt. in augt. last to enquire about paper q.r had been taken out of his mill — desired W. to enquire about it of B. Wales, his foreman, which he did — Wales d.d no paper had been taken away with.t being entd in the books — Defd. ment.d to W. that he tho.t there had been paper taken away not entered in the books — That W. told Defd. that in winter preceds. he had seen a Canadian pass the door of the Store in the evening as W. was going to shut in the door, with a sled & paper in it. — That at another time in Septr. a hogs. of August early in the morng. saw Son of Dan.l Flint. carry a parcel of paper away — That in consequence of this information Defend.t proceeded agt. Wales —

x D

That there appd. to be about a doz. reams upon in the sled — it was not yet dark, altho' it was after Sun set — does not know whose paper it was

heard it o? after the arrest that Wales had paper of his own in the Mill - That the wages were p. sometimes in money sometimes in paper as they req. it - That at the dissn. of the p. there was a quantity of unfinished paper on hand - That Defts. afterwards rec. paper from Pluff, about 20 reams - in consequence of an order from Defts. to Pluff - it was in Augt. or Septr. 1810 - That he understood there had been a general arrangemt. of accounts between the parties in consequence whereof the paper became the property of Brown. This was after the arrest of Pluff. -

John Cheshire, Cleared to be a partr. w? D. in p. mills in Sept. 1809. & Defts. became sole propr. from that time - There remained on hand some stock, but very little paper wh. became Defts. property - Pluff had nothing to do with but as a labourer. -

That in March preced. W. & Defs. purchased jointly of Ware & very little paper - That in March 1809. he understood a quantity of unfinish paper had been taken from the mill & left in the hands of Daml Flint for security of a debt due to him by the Co

In B?. B?. Blowdin & Sirian That in January 1809. 10. Pluff appl? to him to take a load of paper from the paper mill at Argenteuil - of this he gave information afterwards to Defend?. in Augt. last. - That this was before the prosecution agt. Pluff by Defts. - That Pluff & Ware loaded the sled - carried it to three places - one part to Pluff. one to Wales, & third to one Flints - That he lent his horse & sled to some parties for another load, but cannot say, whether of paper or not That he gave his declaration of what is above mentioned to the Grand Jury -

That he carried part part of his load to Pliff's house — & went afterwards to house of Wales. — That Ware was present when the paper was loaded in the sled —

Silas Warren — Was in Defts employ in winter 1809. 10 — & saw a train brot to the Mill-door about dusk, by last time saw the train after it was loaded with paper — thinks Pliff was then — That paper was taken out of closet in the Mill — when paper when finished was sometimes put — did not see it taken from the closet, but knows it was the same paper he saw on the traine — Wales was foreman of Defs. & kept the books of Mill

That after Pliff & Wales had left the Mill, he told D. that the paper wh. they called the company paper had been taken away — that he made a deposition after part before the arrest. at the instance of Defts — That the same day heard them talking that they would take away the paper, but does not know who was present at the time — That Adolphus Hooker, was present — That this paper was kept apart from the other paper of the Mill — That it was always called the Comply paper —

Wm Perry. — That in Dec. 1809, a load of paper was carried out of the mill from the finishing room partly by Pliff who he saw put it on the sled — That there was paper in the finishing room wh. had been made after Brown became sole proprietor of the Mill — cannot say, whether the paper carried away by Pliff was property of Defts but it was called the Comply paper —

John Nicols. — In August last some days before arrest of Pliff Deputy emp. of Wales foreman

persisted in denying that any had been taken away – refused to communicate to D. a private Journal kept by him, to see if any entry was made of the paper – this demand made several days. –

Cannot say whether D. spoke of paper in general, or his paper – never heard any mention made of Comp^{y} paper –

~~Genl. Adolp. Hooker~~

The Solr. Genl. The Defnd^{t} in cust. last told him that part of the Comp^{y}'s paper had been stolen from the Mill – that this paper had been transferred to him at time of settlem^{t} & was his property & in his poss. at the time, & that Wales had no poss. of it – That Defnd^{t} did not appear to be actuated by malice exp^{t} parties, but upon the supposition that he had been robbed of his property – That persons were named as witnesses by Defd^{ts} but cannot say whether they were heard before the Gr. Jury – That upon the circumstances there appd a probable ground of prosecution for the felony. –

Genl. Ad. Hooker. There is no entry in books of the Mill of any paper having been delivd to Pfff & to Wales in Winter 1809.10 – except a few quires to Wales – That it appears by an entry in May 1809 the old stock of the Comp^{y} was finished & worked up –

That Wales kept the Co. books prior to the book now produced –

Chas. M'Cord. That when Defendt applied to W. told him the circumstances of the case he directed him to apply to the Crown Office to get advice he went off & returned to procure a warrant as Pltff & Wales saying that the prosecution would lie — in consequence the warrant now read was made out —

John Chesser All the property of the old Co was vested in him & by him made over to Defendt — knew nothing of any old Co paper in the mill at the time he made over the concern to Defdt —

X

Ware was person appointed to settle Copartnership debts —

Esp. N.P. 529 - 530

Stuart — objects to any wit be produced by Pltff to rebut the testimony adduced by him on his defence —

Court admitted

Jno. Harrington. One of Copartners of W. Ware & Co, & when that Partnership was dissolved — in March 1805 Other Copartners. W. Ware. Artemas Dickson & James Brown — Defdt — at dissn no unfinished paper in the mill — but there was a quantity of unfinished paper in the hands of Dr Flint belong to the Co — and Defdt. and Chesser consented that this paper should be brought back to the mill & finished — for wh they were to be paid — This paper under the control of W. Ware who was appt. to settle the differences between the parties —

X

Daniel Flint.

Daniel Flint. Merchant at Agent Town for W Ware & Co when the Co was indebted to him in March 1805 — for the security of which a quantity of unfinished paper was put into his hands by that Co — Cannot say how much was of that paper — he afterwards gave it to B Wales to finish, and for consideration got his payment from Defdt — Wales gave a draft on Defendts for his debt of which Brown paid — That his son purchased about a ream of wrapping paper from Hooker at the Mill —

Walter Ware. One of Co. W. Ware & Co — sold to Chesson & Brown — sold no paper to them — That the paper given to Flint was brought back to the Mill by the Consent of Chesson & Defdt to be manufactured & deliv.d to Wales as their property for their purpose — That in pay.t of Flint's debt Wales gave him a Draft on Defdts — which Defendt refused unless drawn by the Co whereupon the wife — as agent of the Co drew a draft on Defdt which he accepted — That directions were given to Wales to dispose of the paper & pay Defendt the amount of this Draft — That a quantity of the paper was deliv.d to Brown, and the remainder sent to Wales & Cliffs home — That he was present in the Mill when the paper was carried away — That he was appointed to settle the accounts of the Old Co & after the arrest of Cliff & Wales the Defdt purchased what remained of the paper from Writs & Others Partners —

— On defence —

1. The information given by Defts — to the Magistrate McLeod not produced — no other proof of this ought to be admitted, not even the declaration of the Magistrate to supply it while the original exists —

2. No proof that Defendt even appd before the Grand Jury —

3. No order from the Criminal Court for a copy of Indictment —

Verdict for Pltff £10. — Costs

Saturday 16 Febry 1811.

Cause fixed for hearing on merits this day —

Glover — Knowlton — Pltff urged for a further day for obtaining a return to the Com. Rog. sued out in consequence of a delay given him for that purpose, & to be returned into Court this day — Not granted —

Pascal & Co Knowlton — Pltff then moved to be permitted to type the copy of the Interrogatories submitted by Defts to Pltff's oath —

Pltff Discont. this actions —

Dupuis Merkley — Action for recovery of wages for cutting down wood for Defts

Ross for Defts says, there is no proof of Pltffs demand — That on the Incidental demand there is proof to amt of £44 —

Sol. Genl

Parker Gerrard & Co
vs
M Gill.

Action of Account.

Ross for Plffs. Dickson & Co. indebted to Plffs & Defendts for goods advanced – Dicksons became insolvent at Makinac – & a meeting of parties, & agreed that certain furs shd be deliv.d to Defendts & be equally divided among all the Creditors – this Defendts refuse – & the action is brought for this purpose – Plffs say their proofs are suffict to establish their right of action –

Beaubien for Defdts

The Insolvency of Dickson happened in 18 Oct. 1808 the furs in question were deliv.d to Defdts in June 1807 – Action is founded on a pretended agreemt. at a certain meeting of Creditors at Makinac – This agreemt must be proved by some agreemt in writing as being above 100$ –

That Robt. Dickson & Co. ought to have been parties to this suit – to shew the Plffs right in debt agt them before they can agt Defdts

That R. Dickson a partner of R. Dickson & Co has been adduced as a witness impleadg – says he is not interested – the contrary is evident from his testimony – That partn of Dickson is dissolved, & a partner cannot be heard by his oath to set up a debt agt that partn having only a share therein –

Proofs not made out to support action

Stuart for Defdts

That Bankrupts shd have been parties to the Cause otherwise no contest between Plffs & the Bankrupt to establish their debt –

1 Plffs must shew existence of a debt due to them by Bankrupt —

2 Agreement between Plffs & Defdt — to pay them the money now in question. —

1. Only evidence of debt is R. Dickson — one of the Bankrupts who is inadmissible — a man cannot confess who cannot give a Bankt — can make no admissions of a debt due to or by him —

That Plffs should have produced Invt. Sales of the furs in England, & not adduced the confession of Bankrupt,

2. Agreement land at Montreal, & Canadian law applies — But if a bankruptcy — third persons may be concerned. their interests must be considered — agreemt — after bankruptcy among Creditors to pay the debt of another — & by law of England verbal testimony of such agreemt cannot be admitted — ats St. frauds 4 pergt 29 ch. 2.

Ross in reply —

In ans: to Beaubien says — that by letter of license Ex. No 3 it appears that Dicksons were Bankrupts in June 1807, & qr is repd by Defendts — & qr also admits that Plffs are Creditors of Dicksons —

It cannot be taken advantage of now that Dicksons were not parties in the Cause — shd have been stated by proper pleading — properly but — Dicksons living in a foreign country — not within Jurisdiction of Court — a Motion a decision of London

That Dickson is a legal witness. ats 3 T. Rep. p. 27. Bent v Baker —

Bradley v Clarke 5. T R. 197 —

In ans: to Stuart — Not a case within Stat. frauds.

Williams. v Lepes 3. Bur. — not a promise to pay the debt of another, but a promise to perform an obligation on their own debt

4. Bur. 2101. Clayton Creighton. v Andrews — } Promise for the person himself & not for a third — St. does not apply —

Peake's Evidence. p. 227 —

Leprohon
Chambert

action to obtain possession of a certain apartment leased to Pltff.

Ross for Defdt.

Defdt. says, he recd no notice to quit, that is 3 months notice, he having possessed the apartment for several years—

Rolland for Pltff — refers to most Congé. Dft. F. to shew that 3 months notice are not requisite in this Cause —

—

Drake
Gouverneur

action as a Sheriff in Upr. Canada —

Rolland for Def on Excep. pleads nul tel record, — & satisfaction — excepts to the proof of the record, by the Cls. Sent. of Up. Canada —

Ross for Pltff. says there is sufficient proof of the Sheriff —

—

Hunter
Wolbrith

action to recover money had to Pltff use

Beaubien for Def. pleads prescription — Reynolds v. Pell —

Sol. Genl. for Pltff — Prescription does not lie in Law —

—

Davis
Stebbins

action for dam. for non-delivery of Slaves — ex parte. —

Open acct. Sheriff for £32. 9/ — he has proved —

—

Johnson
McDonald.

action for wages —

Ogden for Pltff — states that Defdt carried off the raft on qr they had a lien for their wages —

Ross — for Defdt — The raft taken away not equal to the amount of the wages claimed — Pltff have not made out ~~this~~ a debt ~~due~~ by Defendt — it was the debt of one Wells, & of qr there is no proof —

~~Ogden for Pltff — Defdt has filed no plea —~~

McClement
Patterson

on action

Ross for Defdt — no service of process on Defendt — service said to be at the dernier domicile of the Defdt — this not sufficient. —

Sol. Genl. There can be no service at the dernier domicile, the Prov. Ordce of 1785 regulates the service of process & no other can be admitted —

Bedard for Pltff — There is suffr proof of service at the dernier domicile — qr is suffr —

Morrison
Raymond

on Inscription de faux —

Rolland for Defdt — Inscrip. en faux — on a protest filed by the Pltff — ~~proof~~ he has adduced suffr proof of moyens —

Ross — for Pltff —

Lefevre. —
& Bourque
& Mondelet.
Gar[t]

Action for Lods & ventes — on 2 Mutations —

Pltff prays Judt —

Vrai[e] Jr — Pltff acknowledges by his Declr. to have rec[d] suffit. to cover the Lods & ventes due by him personally —

Beaubien for Gar[t] — Pltff. have not justified their demand — no proof of ~~tradition~~ under the deed of Sale —

Monday 18th. Febry. 1815. —

Neil Morrison
& Raymond

Inscription en faux, rejected, as being made upon an immaterial paper filed, upon qt. the Demand is not founded. —

Farribault.
Lapierche —

Action on Sale — Judt. drawn up by Pltff — alternative given respecting remeré. —

~~Lacroix. —~~
~~Parys —~~
Paris. —
~~Robitaille.~~

~~On question whether Pltff. motion~~

Hart
Dupré
Taliaffe

On rule to shew Cause why there sh[d] not be a folle enchere on return of Sheriff, respecting a Sale made by Sheriff's officer during interval between decease of the late Sheriff, & the appointment of the present Sheriff. —

Stuart for Taliaffe — at time of the sale there was no Sheriff & there could be no Sale —

Dyden for Allen a purchaser — contends there shd be no costs pd by him agreeable to the terms of the rule sued out —

Ross for Defts. St. Geo. 2. business of a deceased Sheriff carried on by the deputy for 6 months after his decease — The instructions for Sale given by late Sheriff, his death happd on Saturday & the Sale made on the Monday after & not known to the parties at the time of the Sale — Deed made under the authority of the Court — Sale under the direction of the Court — & therefore consents that Court order present Sheriff to give the parties purchasers a title. —

Stuart — St. of 2 Geo. not applicable — State of things in this Country different — Ds to bailiff acting under his orders without knowledge of Sheriffs death, like a mandataire, not applicable to a public functionary source of his authority gone — no indemnification by heirs, as in case of a private mandataire. —

Labelle — Filion — } Action for recovery of arrears of an annual pension —

Bedard for Plff prays Judgt. on proofs adduced by him —

Sevegue for Dfts contends that he is not bound to pay such arrears whereof the day of payt happd after decease of the donor Le Cuimet — cite Poth. Cont. Cont. art. 7. Nos 255 — 257 — Rep. Inst. Rente viagere p. 159. —

Bedard. only art. 9 became due after decease of Cuimet, is 14 ½ bushels wheat, the other articles became due prior to his death

Freligh. Davis E. Contra

Action on a promissory Note –

Ogden for Plff – principal demand admitted – Incidt demand on a note indorsed subsequent to institution of present action – when made, tender of money was made thereon – no cost ought to be allo. –

—

Perreault Geary –

Ore deed of Sale –

Lacroix for Plff. prays Judgt. declaring a receipt –

Ross for Defdt. Plffs. wife had right on lot of land sold & refused to sign the deed of sale – until Septr. last, prior to which a tender was made of the money & a refusal to get the signature & therefore a demand should have been made on Defendt. after the signing of Plffs. wife, before bringing this action. – Therefore Defdt. shd. not pay Cost –

This fact contested by Plff –

—

Smith. – & Kay et al.

Action to rescind a transfer made by Defendts Kay & Smith in fraud of their Creditors –

Ross for Plff – Defendts Kay & Smith were Bankrupts at the time of the transfer – 1 Dorat. de fraude. p. 188 –
1 Bum. 467. 2e de p 827.
5. T. R. 197. –

Beaubien for Defdt no facts proved to support Plffs. action –

Bedard for de – when transfer was made. Defdts were doing business – 4 april. 1807. transfer – Bankts. 18. of same month – such a transfer made in bonne foi wt. Creditors valid of dom the

any preceding bankpts. cite Domat — There is no proof of fraud — Code Mar. tit 11. art. 4.

Ogden for Carleton says, that in consequence of the transfer of his Obligation he pd them part of his debt, & in good faith, ought not therefore be bound to pay it over again — but have his Costs. —

Ross in reply — The writs of Summons on Defts. served in March on part of their Creditors for their debts — the transfer made subsequent to this on 4th April —

Sewell v Cogswell — Action on a promy Note —
Sol. Genl. for Pltff — demands Judt

Boston for Dfts. The witness to the Note not adduced to prove it.

Sol. Genl. Evidence sufft. by L. Re. 266. note (c) — Douglass. Reps. 93. Coghlan v Williams

Flint v Chapelet — Action on note &c — Nothing pd. of demand

Griffin v Georgen — Action for rent of an emplacement — Sarill. vents. N. 239. bon. for — bon trouble. Obl. 467. — vents. 88 —

Georgen for Defdt — That Pltff. has been declared not to have been propr at the time of Sale to Dfts — This eviction is sufft. for Defdt to require his Security

Ross for Pltff. By Judt in question Pltff is preserved in his possession for Several years to come. —

Tuesday 19th Febry 1811

Lowell vs Cogswell	Judt
Dorleans vs Chandonnet	Do — Jury for wont
Lewis	Judt for £12.10 Dy.
Leblanc vs Blais	Judt
Welch vs Welch. Dawes vs Coulter	Judt
M Donald	Case. —
Racicot vs Mansfield M. Kay	Judt the Court admitted the Case of the Case to be w the Pltff.
Perrault vs Geary	Judt. w Costs. —
Racicot vs Racicot	Parties admitted to make proof
Hall vs McKay	Judt — Jurs —
Rollin vs Bouthillier	Mo. that sd made when offic of Sheriff was vacant be set aside —

