

K. B.

Civil Pleas - Montreal.

April Term. 1811.

June Term " "

October Term " "

April Term 1811.

Monday 1st April 1811.

Judge Ogden absent.

Northington.

Baird

14 Sec. p. 28.

On Plff's mo. for Com. Rog^r.

Defend^t - Plff was too late in producing power of Att^s as required by the rules of practice - & moves that action be dismissed.

Plff - obt^d delay to 20th Mar. to file P^r of Att^s on 12 Sept^r filed plea thereby waived his right to exact a P^r of Att^s -

The Court were of opinion that the Defend^t by filing a plea had waived the benefit to g^h he was entitled under the rules of practice for want of a sufficient power of Att^s to prosecute the suit.

Stewart.

Finchley.

Plff moved to continue enquete for ex. of 3 writs subpoenaed & who did not attend at the ex. of Wit^s in vacation - claims this under sec. 27. art. 21. -

Def^t says that under art. 14 of same section he is not entitled to further ex. of wit^s having proceeded at his peril & made no reserve until after he had ex^d such of his witnesses who did attend -

168.

Lacroix

Paris

227.

Paris

Robitaille

The counsel for Paris moves to join these actions. -

Plff objects, that causes are not of same nature, nor between same parties in our Cause wit^s ordered to be ex^d - in the other nothing done -

Boston for Paris - considers his action at Robitaille, as in Garantie formelle -

Salisbury
Ross.
4 causes

Action agt Defend. for wages for labour in cutting & navigating lumber -

Sol. Genl. says, he has made out proof of his demand -
Ross for Def. - The Plff left raft, refused to return to take charge thereof & therefore not entitled to wages -

Tuesday 2.^d April 1811

Stewart
Finchley.

The Court were of opinion that under the rules of practice the motion could not be granted, but under the circumstance of the rules not being sufficiently known to the parties being at the time in the hands of the printer, the Court were of opinion for this particular instance to give a day to the Plff for the ex. of his witnesses, but without forming a precedent -

Sacroix
Paris -
and
Paris.
Robitaille

The Court were of opinion that these two Causes were so connected that Judgt. could not well be given in the one until Judgt. be given in the other, & therefore in order to do justice in both, the Causes were ordered to be joined, not in the same manner as a Cause of garantie formelle, where the garant is held to take fact & Cause & plead to the principal action, but that causes should proceed together to Judgt.

Bolburn & Gill
Adams. —

Pliff atts. moved for delay to file a power of atts. to prosecute the action, under the circumstance of the person suing out the writ was merely an agent of the pliff - had not the means any power except a letter from pliff - which contained other matter & could not be filed

Defend^t objects, that this is not sufficient cause for obtaining delay demanded. —

Hagar
Lindsay }

Pliff moved that serment suppletorie should be referred to the Pliff. — being a demi-preuve in his favor. Obl. N. 719. p. 4.

Boston for Dfd. Not a cause q^d will admit of the serment suppletorie Pliff being a trader, & the action being for goods sold.

Perrassol
Taylor }

action for recovery of Defend^t's proportion of a Canal to q^d he is bound. —

Ross for Pliff Defend^t represents one D. M. Kerker who was bound by the P. V. & by Judgt of this Court hom. that P. V. regulates the Cours d'eau & making of the Canal —

Stuart for Defd^t — The Pliff prosecute as syndics to the P. Verbal ~~which~~ are no legal characters nor entitled to any action by law. — The Defend^t prosecuted, only because said to be interested in the subject matter of the suit between other persons, q^d is not sufficient, as he ought to have been made a party to the suit by being called into it by legal process — The Judgt^{119 Sept. 1806} referred to, is only Interlocutory, as s^d that the costs therein ment^d are to be p^d & supported by the persons liable — something further sh^d have been done in the Court to shew who were the persons liable —

The action in the Inferior Court was between two Individuals
Clement Perras, & Et. Fournier - no ground before that Court to divert
the enquiry stated in their Interlocutor of May 1806 - That
D. McKuscar was not nominally called into the Suit. - That the
appointment of Syndics will amount to a perpetual succession -
That the Jurisdiction of the Inferior Court does not extend beyond
£10 - The object here directed by the Reports of the Experts, &
Judgt. of that Court of 19 Sept. 1806, exceed £200, at least much
beyond the competence of that Court - This Judgt. directs a
repartition of the Costs to be made among the Interests - but no
principle settled whereby to regulate this repartition - Charleau has
made a repartition without authority - It has not been homologated
by the Inferior Court -

Ross in reply - By laws & customs of Canada, all questions respect
water Courses are regulated by the Inferior Courts - The appointments
of Syndics made by the parties and confirmed by the Court - The
Judgts. given in the Inferior Court are final & conclusive, and
this Court has no jurisdiction over them - The parties acquiesced
in the Jurisdiction of the Court by not making an evocation
therefrom - The Syndics were authorized to make the repartition, &
they employed Charleau to do it -

Stewart - The chose jugée, cannot be set-up, where the Court judging had
not jurisdiction over the matter determined -

Bourdeau
Finsterwall

Action for aliments furnished to Defd^t -

M. Viger for Defd^t - The Defd^t is son of Plff^e wife, and
some time of demand ~~occurred~~ transactions have taken place
between the parties to shew a settlement of the object in question.
refers to act passed before Henry, Not^s - 21 Oct. 1809 by Plff^e & Def^t
respecting rights of Defd^t in the succession of his late father -
By another act of 30 June 1810 the Defd^t gave up 2000⁺ due
to him by the afores^d act of 21 Oct. 1809 - This must presume
a settlement of all right & claim of the Plff^e to the present demand.
It was aft. the succession of Lessart, the 2^d husband that Defd^t
had a right to obtain the act. of the continuation of the Com^ts
& it ~~was~~ representing this succession that Plff^e bring their
present action - Pleads compensation for articles furnished
and services done for Plff^e -

Rolland for Plff^e - It is a maxim, that no person is
presumed to give away their property - and act of 21 Oct. 1809
cannot be presumed to give away what is not mentioned in it.
Agrees to the nomination of arbitrators to ascertain the rights
of the parties under the compensation pleaded by Defd^t -

Sweetmain
Smith. -

Action of revendication for 3 oxen belonging to Plff^e

Ogden for Def^t - Def^t is in poss. of the oxen - &^t he obt^d
after the action brought - Def^t ought not therefore to pay costs on
the proof made by Plff^e - sup^d. possession -

Hamilton.
McLaughlan }

Action for Breach of Contract -

Stuart for Plff. - Hearing on law on state of the pleadings cont^d in Defend^t plea, so as to ascertain what shall go before the Jury. - The Def^t. has pleaded ^{1st} not guilty - 9th does not raise any issue - there being no fact charged in the declaration to g^t this plea is applicable - action founded on a special assumption - 2^d. That there is no such ^{contract filed} as that stated in Plff's Declaration - but does not negative the fact charged, that it did exist - It does not answer the other Counts in Plff. Declaration - 5th Plea - The loss of timber by accident, his raft being broken & scattered - Saw was not of any specific pieces of timber - nor was it impossible or impracticable to have completed the Contract by other means -

Order for Dfett - The Plff had filed no written Contract at the time the plea was made, which is the reason why the Defend^t. pleaded, not guilty, & that there was no such Contract as that declared on - That Defend^t. is entitled to shew that he was delayed in completing his Contract by the act of god - and if all the pleas are irregular the Defend^t. is too late, in correcting them, having gone to proof under the issues as they now stand, under a Com. Rog. sued out by him and now returned into Court -

Bonaparte
Desnoyers

action for recovery of sundry goods & monies furnished Deft.
On P^lff. mo. pr^ovide thereon for Deft. to shew cause why
arbitrators sh^d not be named to regulate the accounts between
the parties. —

M. Viger for D^ft. The p^lff are too late in applying for a reference
to arbitrators — The P^lff have ex^o D^ft. on facts & art. reserving
right to ex. wit^o which he ought to ex. before this Court, & not
before arbitrators. —

Beardslee
Gillis. —

Action on assignment of a bail bond. —

Stuart for D^ft. No proof of the process and proceedings in the
original action in q^d the bail bond was given. — Proof of the
execution of the bond also insufficient, as only one of the subscribing
witnesses produced — the other not produced, nor accounted for as
an absentee — P^lff does not shew that bond was executed
by two persons, as it states, the execution by Deft. alone
not sufficient — No proof of the assignment, being made
by the Sheriff, of whose hand writing there is no evidence. —

Bender for P^lff. — Judgt. has been obt^d at the principal debtor
which a copy of it filed, which is suff^t proof of regularity of
proceedings in the principal Cause.

Wednesday 3. April 1811. —

Judge Panet, absent.

Colburn
" Adams. —

Pleff. mo. granted — but on consideration that the
defend^t. is in gaol — he was permitted to plead, saving his
right, if the power sh^d. not be filed. —

Sweetmain
" Smith —

Judgt. for £5 — damages & costs as under £30th —

Hamilton.
" McLaughlan —

The Court sustained the Pleff's demurrer as to the two first
pleas pleaded, & ordered them to be taken from the record. ^{at} Costs. —

Berchelet
" Munn
" E Contra

On Defd's motion to have an inscrip. en faux aff. a
paper filed by Pleff. —

Holland for Pleff The ^{action was founded on the award, and it} ~~award~~ was filed at return of process
and Defd. has pleaded to the action & set up an invid demand
& therefore mo. too late —

Boston for Defd. — That the fact of the falsity of the award
came to the knowledge of Defd. after filing his plea — and
besides an inscription en faux can be made en tout etat de cause.

120.
Lobiniere
" Forbes & al.

Action for trespass & damages. —

On Pleff. mo. to alter conclusions from the Country to
the Court —

Ross for Plff. - Under act of 1785. there can be no trial by Jury except for personal wrongs - not where property is concerned. cite case Rousseau. v. McGillivray -

Papineau for Plff. This is a personal action - but not an action for a personal injury -

Stuart for Defd^t - By personal wrong is understood all actions of a personal nature - 3. Black. Com. p. 117. - & 121. 122. - This is an action of trespass on the Case, being ex delicto & without force Exp. 598. & seq. -

Green & Eaton
Wilson -

Action on a promissory Note -
Noth^e said. -

Bricault
Bricault }

On plffs mo. why there sh^d not be a contrainte as Defd^t as Defd^t for not having rend^d an acc^t. conformably to the Interloc^y order of last Term -

Defend^t says that Copy of Interloc^y served on him says that aut. shall be filed 1st Aug^t. next -

Ordered that the Defend^t shall account, under the penalty of the motion, on or before the 18th inst. -

Thursday 4th April 1811

Judge Osden absent.

Magar
Lindsay

Mo. rejected-

Caron
Rocher

Mo. granted.-

Berthet.
Munn.
E Contra

The award being a sous seing privé act, the Court were of opinion that the Inscris. de faux could not be rec^d. as^t, it

Donegani
Desnoyers

Rule granted for reference to Arbitrators.-

Lacroix
St. Denis
Garant

came heard 11 Feb^{ry}
Judgt^s

Lotbiniere
Forbes.

Pliff's
Defend^t motion ~~rejected~~ granted, for changing conclusions to the Court.-

Carter G. O. & Co
McGill & Co

Judgt. to account, upon principle that proof was suff^t to establish a promise to, Def^t to account-

Hamilton
McLaughlan

Pleff moved to fix a day for trial of Cause -
Objected by Defd. that necessary witnesses cannot be had before
October next. -

Friday 5th April 1811. a

Judge Ogden. absent

Hamilton
McLaughlan

Order for trial on 10th June next. -

Beardslee
v.
Gillis -

The Court were of opinion that the proof of the execution
of the bond was sufficient by one writ & the assignment by
the Sheriff as a public Officer was sufficient without any
proof -

Drake.
Gourdean

The Court were of opinion that the copy of proceedings as
certified under the hand & seal of the Clk of the Court of
K. B. and of the Chief Justice ^{of the C.} was not sufficiently authentic
to constitute a proof of the Indt. upon wh^{ch} the action was instituted
Being however a new case a day was given to the Pleff to make suff^t
proof -

Berthelet
Munn
E contra

On Defd^r's rule to shew Cause why he sh^d not be all^d. to amend
his plea, vnder fact states in his affidavit that the knowledge
of the fact has lately come to his knowledge

Rolland - The Defd. too late, having pleaded to the award, he cannot be
admitted to say, that the award was a false one when he has admitted it to be
true. -

Sarant.
Gravel.
and
Gravel.
Leheup.

On P^{liff.} mo. to reject plea from cause filed by M. Leheup
^{to P^{liff.} action}
as being no party in the Cause -

Beaubien for Leheup - says she has been called in as a Guarant
in the Cause and she has a right to plead to the whole
demand being a party in the cause - Pro. Civ. ch. 2. Sec. 6. art. 2 - & § 2.3
Ord. 1667. tit. 8. art. 12. -

Beaubien for P^{liff.} a Guarant simple cannot take the fact & cause
of the person whose guarant he is - he may assist the person whose
guarant he is, but cannot plead to the demand in chief ^{unless he join in the same plea wth him} - Prob. Pro. Civ.

Leroux
Roi -

On mo. to annul service of process has been made on a
holiday - 25th March. -

Stuart for P^{liff.} Rule does not extend to service of process, but merely to
sittings of the Court upon holy days - nor does it apply to services made
by the Sheriff. -

Dominus Rex
Talou del

On Information of Def^{t.} to obtain poss. of a piece of
land in the poss. of the Def^{t.} being part of the Fortification
Grounds -

Stuart for Def^{t.} - The present is an action in complaint & rentegrant
there can be no such action, the King is virtually in poss. of all
the lands of the Crown & to deprive him by force as here stated without
committing an act of H. Treason - Between Sup^{r.} & Vassal there can be
no such action - Rep. de l'Emp. p. 293 - Papon. p. 474 -
Nouv. Den. vs Complaint par 3. pag. 2A -

Rep. 293

Lemaître. p. 132.

1. Fer. Gp. Court. p. 1520
no. 9. 439.

6 Com. Dig. 1064. 667.

Sol: Gent. The action of possession can be had by the King as the subject, although Subject cannot have this action as the King.

Com. Dig. vol. 6. v. Prerogative - a person entering on King's land, shall be considered an Intruder. & an Information lies against him -

Stuart - King may have action of Quare clausum fregit, q^d is similar to action of voyage de fait. - The action brought is known only under the laws of this Country & must be determined according to the principles of that law - The action sh^d. have been an petitione, - King is virtually possessor & prop^r of all the lands within the Kingdom & requires no title to prosecute this action - action in complaint must be brought within the year & day after the disturbance - but the maxim is that no prescription can be set up against the King, q^d shows that this action never was meant to be given to him -

Lacasse - }
Busby }

Court till to morrow

Fletcher }
Cook }

Action in revendication for a certain quantity of staves -
Stuart for Dep^t denies pl^t's right - action without foundation & the attachment illegal - incidental Demand - of q^d there is proof -

Thouin }
Piccard }

action for Represes Matrimoniales -
Dep^t's caveat - Evid^t prepared -

Saturday 6th April 1811.

Judge Ogden abt

Smith
^{v.}
Kay & Smith
McKenzie & Clements
& Carreau.

Judge^t rescinding the assignment made by Depts
Kay & Smith to McKenzie & M. Clements, as being made
at a time that they were insolvent & unable to pay their
Debts —

Saraut
^{v.}
Gravel
&
Gravel
^{v.}
Leheup —

The Pliffs motion for rejecting the plea filed to
his action by the Garant, Leheup, as a party in the
Cause, was granted, the Court being of opinion that
the Garant cannot plead a fact & cause in the Cause —

As to the Defendants motion for joining the Causes, the
Court were of opinion that they would not join the two Causes
~~as~~ they were sufficiently connected ~~to~~ to be united in one Record
so as to enable the Court to do justice between them — And here
the Court settled it as a point to be observed in practice that
when an action en garantie whether simple or formel was sued
out, the return & proceedings thereon should be brought into the
Original Cause —

Seroux
^{v.}
Roi —

The Court were of opinion that the rule did not
extend to the service of process by the Sheriff on a
holyday. —

Ernstinger
Patterson & Co

X

On Plff mo. to reject plea of Excep. filed by Defend^t. he not having sw^o. Plff with a true copy thereof -

Rejected - being founded upon an immaterial point

The Plff having answered generally to the exception moved for a hearing thereon immediately - The Defend^t. says, where the party does answer to the exception, he must give notice of his motion to set down Cause - & it is only where no answer is made that a hearing on the exception may be had instantly without notice to Defend^t. - The Plff afterwards withdraws his answer -

Gale for Def^t - Defend^t. pleads - That Declaration is contradictory containing 3 Counts - 1 on a bill of Ex. 2^d. for money lent. & 3 money advanced - the conclusion is only for one sum, viz^t. the last, of^t is not a fit question for decision of a Jury - That the copy of the Decl^r. not conformable to Original - states 25 March - & in Original stated 25 March last - charge as to interest, not same in both -

Ross for Plff. That the Declaration is sufficient, and the Defend^t ought to answer thereto -

Streat for Def^t - refers to case of Symer v Sutherland & Robertson - breach not laid to all the Counts. -

Lacasse
Busby, Cur
& Woolman -

action to render acct. of succession of late May^r. Deschamps
Ross for Def^t. Woolman - Plff claims her rights in the communities of her father & mother - now it appears that she

red

rec^d. her rights in the Community of her father & the receipt thereof is fitted -

That the Plff^r. mother willed away all her rights in the Community between her & Wendelbass, & she has no right to claim any thing therein - Will made prior to 1801. But Plff^r's mother died after that law, which rendered ^{such} wills made by wife in favor of her husband valid - & as ^{the} will can only take effect at the time of the death of the testatrix, here it was rendered effectual by that law - The incapacity of making the will did not lie in the wife, but in the husband to take under that will - this incapacity was removed before the will was published -

Dufaix
vs
Beauprés
+ al^s -

} Action of Covenant -

Rolland for Def^d - except to the declaration inasmuch as the action is instituted against them as Syndics, but the conclusions thereof are taken against the Defend^ts personally - The contract by the Defend^ts wth Plff was made in their capacity of Syndics

George for Plff. Decl^r. conformable to the Contract between the parties by q^d. they are personally bound

Holgate
Jackson

} action on a contract for timber -
Boston for Defdt. No proof of pliff demanded, as to the
quantity of staves contracted for by Defend^t.

Davis
Faubert

} action on contract for timber. -
Ross for Defend^t says, that staves were ready but Pliff
would not take them. -

Davis
Morin

} action for delivery of staves by Defd^r. to pliff -
Ross for Defdt. Pliff had the staves culled at Quebec without
the participation of Defd^r. - The Pliff on the contrary was bound
by the delivery to him on the place where they were cut -

Leprohon
Chaubert

} On question of damages for not-delivering to Pliff the
poss. of a certain apartment -

Domat. liv. 3. tit. 5.
p. 230. c. 2. 5

Poth. obl. n^o 160. 1. 2.

Loauy. n^o 68. 70.

Pliff - The Intercutor made in this case admits the parties
to the proof of Pliff damages - alleges that they ought to be estimated
by all the Pliff lost by not having had the possession of the
apartment -

Defd^t - Fourmeu bio. fues. as a thip. to prove damages p^d. to him by
Pliff - Defend^t cannot be bound to pay these damages -

Monday 8th April 1811.

Witness-clerk.

Holgate
v
Jackson

Judgt. for balance on 10,000 feet of pine -

Salisbury

Ross -
v
A Cause

Judgt -

Davis
v
Humbert

Judgt -

Davis
v
Morin
et al -

Judgt -

Ermatinger
v

Patterson et al

on Exception -

The Court were of opinion that the Exception was founded
in so far as it related copy of the declaration, & ordered that
a true copy should be saved on Defend^t -

Dufaup

v
Beaupres

The Exception being considered as wholly unnecessary
Dismissed -

M^c Clement
Pattinson

Judg^t. admitting service of process at dernier domicile
to be good - Exception dismissed. -

Dominius Rex
Pre Talon
per files. -

The Exception dismissed -

Caron
Rochou

Judg^t. dismissing the Exception touching Defend^t's
to amount -

Tuesday 9th April 1811. -

Witness day. -

Wednesday 10th April 1811. -

M^c Jarvis & Co
Magars. -

Plitt moves that certain exceptions pleaded by Defend^t be
taken off the files as not containing matter sufficient, nor
pleaded in a sufficient manner, as the reasons of the exceptions
are not stated -

Adam
Mérille -

Inst. 20th

action de complainte -

Quésnel for Defend^t action by a coheir at. Defend^t who is a coheir & enjoyed the thing in contest in common does not lie. Demot. vs Possession. N^o 6. -

Sect. des arrêts. vs Héritier. N^o 52. -

Refers to an acte de partage between parties -

Parth. Poss. ch. 6. Sec. 3 N^o 96 - possession precaire not suff^t to maintain this action -

That Plff acquired the property subject to the servitude of a passage over the land purchased to Defend^t - if action should be founded on this

That Plff has not enjoyed the property for a year and day to entitle him to this action -

Rolleand for Plff - Plff has filed the title under which he founds his possession - The partage filed shows that it has not been perfected, as something remains to be done as to the plus value of one lot over the other, still this be done the parties are considered to possess by indivis. etc. Parth. Sec. ch. 4. art. 1. Sec. 1.

Dom. liv. 3. tit. 7. Sec. 3. Sem. 22. - right of servitude cont^d by intention to possess it -

Ross for Plff. The Defend^t is a stranger to Plff & a trespasser Code Civ. tit. 18. art. 5 - no title can be set up to warrant a trespass -

The soil belongs to Plff - The acte de partage never carried into effect so as to give a right of servitude upon the land to cut down wood thereon -

Parth. Sec. ch. 4.
art. 1. Sec. 1.

Turgeon
Labelle }

Action on certain deeds of sale & other

+

Viger for Def^d - Part of the first Count - not due - by receipt filed by Def^d. all interest p^d up to date thereof -
As to 2^d Count - for Note of hand - Def^d. pleads prescription -
As to 3^d Count - on Jud^g. in the Superior Court - Plff ought to have proceeded to execution of that Jud^g. in due time, & ought not to proceed thence here -

On the 4th Count - for arrears of Rente Constituee - Larombe
arr - arrears - Senz^d. co. verb. Poth. - Nos 132. 133. Constit^u
Prescription applies -

Lacroix - Plff is entitled to interest on deed of sale of land -
As to note of hand & Rente Constituee - Prescription cannot avail
him, as by receipts shewn it appears that Def^d. acknowledges
the Debt. - Besides Def^d. files an account in support of his incidental
demand by 9th it appears that the parties have had dealings together
since 1793 - That it would only be an object of tort, as to the
object of the Jud^g. of the Superior Court - ~~the parties~~ ought to
be named to settle the matters in contest between the parties. -

Viger - Plff not entitled to interest - Def^d. not en demeure -
Objects to Experts -

Geroute
Villemart
Robitaille
app^t

On Opposition of Robitaille & others Ex^{ts} of Breunet

Bedard for Opp^t claims priority of mortgage -

That obligⁿ on g^l the opp^t is founded being signed by the Def^t. his wife, the Creditor is entitled to the mortgage from the date of the marriage - Poth. Com^t. N^o. 766. - g^l. is anterior to Plff's Obl.
As to novation alleged by Plff to Opp^t's claim - it is a principle Obl. 594. there is no novation unless the Creditor intended there sh^d be a novation -

Leveque for Plff. the Def^t's obligⁿ to Breunet was discharged in consequence of the new arrangement - which shows a novation -

That the lands sold being conquests of the Com. the husband had a right to mortgage them -

That the Receipt given by Breunet discharges all rights under that obligⁿ - Dou. l^v. 4. tit. 1. se. 2. art. 4 - Fin. de w. Hyp. Poth. Obl. N^o. 595. 599. - Rep. sur obligⁿ. N^o. w. Hyp. -

That Opp^t has not claimed en sous-ordre under right of Def^t's wife agreeable to authority Com^t. N^o. 766 -

L. Pajou. par. A. p. 737. the rights of wife must be in question Com^t. 764. reason of indemnity given to the wife upon husband's estate - security of her dot - ~~is not~~ shown she had any dot in this case

That all persons who have the wife as a debtor, whether it be by obligⁿ - whether contracted on the day after mar. contract or at any length the optimum after - will all have the same ^{own} priority of mortgage on wife's property -

Com. N^o. 766

Arts. 20th

l^v. 1. ch. 5. s. 2
Art. 3. N^o. 2

2^e Fe Com. p. 57. g^l 2
3. N^o. 4.

Poth. Com. p. 1. ch. 2. N^o. 40
203. -

Rep. v^o Conquet.

It is contrary to the principle of mortgag to mount higher than its creation -

Bedard - pleads that notwithstanding the receipt given by Breinet, he never meant to give up his right of mortgage under the obligⁿ -

As to claiming en sous-ordre of the wife - not absolutely necessary it is suff. that claim be made under the rights of the wife

As to the right claimed upon the lands sold as being congruents of the Community - then lands ought first to be applied to the pay^t of the rights of the wife -

Hagar
Hindsey

action for goods sold

Boston - not a mercantile transaction - money pd to third persons on behalf of Def^t - no suff. proof - Part of the demand for Def^t's maintenance while in gaol at the suit of the pliff - ought not to be allowed -

Provendier
Henriou

action for board - & damages for assisting Pliff's debtor to escape -

Motions made by both parties to reject depositions filed in the Cause -

Def^t. says that Wit^s Martin & Berab - as interested - Debt contracted by Def^t. novated by Note taken by Pliff. Vol. N^o 583 objected that Wit^s under Com. Rog. do not say they are not interested - not a reason to reject their testimony -

Dumas.
Burtou }

action of debt on obligation -

Sol. Genl. for Dft. obligation for the debt of another not
by Dft. as personal debtor - Discussion necessary -

Stuart for Plff. - Debt by legatee for debt of testator -

Sol. Genl. This obliq. does not discharge the original debt -
which still subsists -

Parker & Co.
Vigneau }

an rule to shew cause why certain pleas of Esup
shd not be rejected from Record as improperly filed -
with a plea to the merits. -

Stuart for Dft. The excep. filed is peremptorie en
droit - and not a la forme, may therefore be joined with
the general issue -

Spinard
Dumont }

Question whether there shall be a reference to Experts or
not -

Mabbutt

Rolland for Plff. -

Defendant pleads a compromis to arbit. and then award
but instead of being made by the arbit. it is made by an

umpire alone, qf. is not consistent with law nor the reference made
Sensart. vs arbitrage - §. III. N. 2. Rep. vs Arbitrage

The award upon different objects from those upon which this
action is brought -

The award not obscured in manner as by law req^d -

Louise - Traité de
l'Administration
de la Justice. sect. 8.

N. 56. 58. 60 -

Polk. Proc. Civ.

2. p. ch. 2. art. 2. 3

p. 121.

Stuart for Def^t The award made in conformity to the submission - That no publication of the award was necessary, it was to be made ready for delivery by a certain day under the reference - which was the case - & it was not requisite that it should be delivered. - Ky^d. p. 74. -

Bosson
^{vs}
Meath

Action by Pleff as Indorsee of a Promissory Note -

Defend^t alleges that Pleff obt^d possession of the note by fraud as acting on behalf of the Defend^t - & never p^d value for it. -

Thursday 11th April 1811. -

Mabbutt
^{vs}
Masson & Hall

The Court considering that the umpire had sufficient power vested in him under the reference to make the award alone - sustained the award as regular & sufficient and admitted parties to make their proofs thereon -

Dumas
^{vs}
Burtou -

Exception dismissed - consid^d. Def^t. as personally bound

Parker & Co
^{vs}
Vigneau

Exceptions pleaded to the form with a plea to the merits ordered to be taken from the Record with costs -

Herbert }
Dupres }
v

On deed of Sale -
Defend. as Curator submits the case -

Saturday 13th April 1811. -

Ch. Just. &
Judge Ogden } absent. -

Masson & Hall }
v }
Mabbutt. u }

On Defd's mo. to dismiss Plff's action for not having of filed
a Replication -

Pl. 21 ch. } cited
Tidd. Prac. }

Motion rejected as inadmissible. -

Spinard }
v }
Dumont }

Court admitted parties to proof of repayment & Compt. -
as upon this the other parts of the plea will be determined -

Keese. }
v }
Marchand }

Action for Trover to recover from Defd. a certain quantity
of timber belonging to Defd. -

Stuarts for Plff. Action not a commercial one - & defence proved
by one Boring, who says that under a power from Plff he sold the
wood to Defd. - That the paper even if proved, does not
avarrant Boring to sell the timber - At all events it could only have
given a right to sell one half of the timber -

Statement of timber to be made -

Ross for Def^t - Plff has not proved that he was ever possessed of any of the timber in question - none of the witnesses prove that the timber came down in the pos. of Def^t - That timber was taken at Quebec to be sold, & Def^t offered to cut to Plff for one half according to the agreement with Briset -

Busby -
Woolman }

Action on obligation & settlement respecting Plff rights -
Stu art for Plff - objects to the sufficiency of Def^t's plea -
not containing a sufficient answer to the Plff's demand -

Ross for Def^t admits that the proof has been made by him in support of his plea - but says, that under the general issue pleaded, Plff has not made out his demand. -

Jr. Busby
Woolman }

same action -

Def^t says, that the sum acknowledged by Plff ought to be deducted from the demand -

Peltier
Leveillé }

action en bornage -

L. M. Vigé - Def^t is not the neighbour of Plff - the part reserved by Plff not adjoining Plff's land - if proof must first be made, before any survey -

Rolland for Plff. Sale by a Buyer at the seller to complete
his contract - the land reserved in poss. of Deft^r under Judgt. of
the Court as joining Plff. land -

Hamilton
Platt -

On rule to show Cause why Plff sh^d. not be admitted
to amend his declⁿ

Boston for Deft^r - That the mo. cannot be granted without
payt. of all costs of Plea -

Monday 15th April 1811.

Witness - day -

Tuesday 16th April 1811. -

Witness-day. -

Wednesday 17th April 1811. -

Vassal
Cuvillier }
H^o

On rule to shew Cause why Ca. La sh^d not issue
ag^t Def^s -

Stuart for Def^s The Plff has claimed a dividend from the
Trustees of Def^s Estate & till it is ascertained what sum shall
be paid him upon that claim, the mo. is premature -

Saraquet
Marmier }
Noel Gant
Bouhillier
arr. Gant

Action to oblige Defend^t to pull down a house built
ag^t Plffs wall. -

Bedard for Plff prays Judg^t on the proofs adduced -

Ross for Def^t says that he purchased from Noel who
are put in the suit as his Gascons -

Rolland for Arr. Gant was prop^r of both houses, one of wh^{ch}
he sold to Plff. that action in guarantee ought not to be maintained
because the pinion of the house he sold, is the only part wh^{ch} he
warranted as mitoyen, & the demand does not regard this pinion
but another wall between the parties wh^{ch} has never warranted
as mitoyen -

Clement
Robillard }

Action de bornage.

Bedard for Plff. - The Plff's land was sold by the Sheriff in 1781 to Davidson & Lees, & by them sold to the Plff. The Sheriff's title ought to prevail for all that has been adjudged under it, viz case *Canturier v. Lacroix* - The lands of Plff is cut at right angles at distance of arp. by Defnd's land, but he contends that Defd's land should be bounded by the lateral line of the Plff's land & ought not to cross it - It is proved the existence of the line at the time of the decret & the boundaries thereon -

Ross for Dfnd. That Defnd. has held & enjoyed his land for upwards of 30 years - ^{and since 1766} Plff claims contrary to his title - claims in the second commission - The front of Plff's land changed by act of the Seigneur so as to cross Defd's land, who has a prior title -

Bedard - Plff's have enjoyed their land under title & possession & have acquired a prescription against Defd. -

Blackwood
Lacroix -

Action on 2 notes, made by one Archambault & by him indorsed to Cuilleret & Co - now sued for by their Trustees -

Objec. for Defd. -

1. That notes were not regularly protested - being made at the house of one Tringre, when Archambault had no domicile there

2. That Cuwillee & Co accepted the s^r. Archaumbault as their debtor in lieu of Def^t - not mentioned in the list of Debts given in leg to them to their Trustees & not assigned to them -

3. That Archaumbault the Drawer owes Cuwillee & Co more than the amount of the notes -

Stuart for Plff - assignment by Bankrupts must in law be meant to comprehend all their effects unless specially excepted - the note was among the debts assigned -

That no sufficient proof that Archaumbault had a different domicile than at Tringue's - therefore protest must be taken as sufficient. -

Seabrook
Peck -

action for house rent -

George for Def^t - House was so out of repair that Def^t could not occupy it, ^{as was disabled in the way out thereof by Plff} and besides by pay^t made by Def^t. the demand is not within the competence of the Court.

Stuart. for Plff - Plff is entitled to £12. after deducting £3 re^d -

Masson & Co
Mabbott

Action on an award.

Rolland for Def^t - says he has pleaded in bar to Plff. action but Plff has not answered, therefore the plea must stand good & he cannot be admitted now to contest it -

Fraser.
Lansing
&
Turzo. Interv^s

Action for goods sold -

Claim by Interv^s party for 30 barrels of pork seized by Plff

Ross for Interv^s party - the pork had been sold & delivered by Defd^t to Turzo before the attachment sued out by Plff.

Boston for Plff - pork stated to have been sold by one clerk the Inspector - it is absolutely prohibited by St. A. G. 3. ch. 9. s. 3. -

That Interv^s party ought to be held to pay cost, even if claim be founded -

Ross - The St. only prohibits Inspector from being a dealer in the article submitted to his inspection -

Blanchette
Poutré

Action on a lease, for rent -

Bedard for Defd^t. Defend^t. has not enjoyed all the land leased - Plff undertakes to prove a reserve not ment^d. in the lease, - the value whereof amounts to £5 - of wh^{ch}. he deducts from the rent

Dubois
Laplante

Action hypothécaire -

Beuder for Defd^t. says, that he has pd. money for rent & other claims on the land, & he ought not to be held to deliver up the land in question without being reimbursed those monies -

The Plff refers to the case of Tringue v. Marois, where it was determined, that for such monies the party can make his claim by opposⁿ. - but cannot hold the land until it be reimbursed -

Bricault
vs
Fisscau

Debt on Obligation -

George for Debt - Plea set up is usury - refers to answers of
Plff to facts & art for the proof -

Clarke
vs
Winters

Action on a promissory Note -

George for Debt - pleads part. of part of Debt - by answers
of Plff to facts & art. -

Thursday 18th April 1811.

Facts & articles - new Rule respecting the mode of taking answers
thereon. -

Young
vs
Blackwood & al.
&
Lawrence & Dayton
opps. -

On Defend^t mo. to reject claim of Lawrence & Dayton as not
having ^{been} filed reasons in support thereof -

Longueuil
vs

On mo. for a contumacy of Defd^t for having opposed the
sale of his effects seized under the writ of Exon in this Cause

The Defend^t objects to the regularity of the return - also that
the Defend^t had been at the time of the seizure named Guardien
of the effects seized, which renders the seizure null - Further because
the Ord^r of 1785 mentions only the opposition made to the seizing
of effects, and not to the sale thereof -

Beaujeu...
Jackson.

Action for Goods & chattels -

Bedard for Plff. - Adjudication was made to one Cedilot at the Church door - stated to have been made for & in the name of Defend^t - contends that if this says the land was adjudged to Cedilot - Therefore double lots are due - that is, as well on the adjudication to Cedilot, as on the sale by Cedilot to Jackson - alleges proof of a further sum pd. by Defend^t to Cedilot, than the land was adjudged for to Cedilot -

Stuart for Defend^t - Plff. sh^d have had an action of debt on the first sale to Cedilot - Sale wrong stated by Cedilot to Jackson as it was made in the name & as Tutor to the minor children of Defend^t - That if Cedilot acted fraudulently, the Defend^t has not participated therein -

Donegani
Desnoyers.

On Report of Arbitrators -

Rolland for Plff. claims honor of P. V. of 2 of the arbitrators
Vige for Defend^t. Report made without proof - solely on the inspection of the books of acc^t. of the plffe - Defend^t. on facts & acc^t. swears to a settlement of accounts between the parties in Nov. ¹⁸⁰⁹ - The Reports show that no witness was ex^d before them - Clear arbiters, are bound to same formalities as had in proceedings in a Court of Justice -

Barker,
McLeod
Miner app^{ts}

On the Opposition of Miner afii de distraire -

Stuart for Dep^{ts} claims the land seized under a title from the defend^t prior to the issuing out the writ of Execution - and there is no allegation of fraud w^{ch} this transaction -

Georgen for Pl^{ff} contends that he has alleged sufficiently a fraud existing between the parties -



St Germain
Hervieux
vs Sanguinet

Action to obtain pay^t. of a certain rentout due on a principal sum left in the hands of the late Simon Sanguinet, on a certain house, of house has come to the hands of the Defend^t. under a Donation from the said Sanguinet -

Demands for Defend^t. That Defd. as usufruitier of the house is not bound to the pay^t. of this rente, n^t being a charge reelle being only a simple creance bearing hypothecue on the premises, but consequence whereof the Pl^{ff} might be entitled to his action hypothecaire as Def^{ts}. Altho Def^{ts}. is not personally bound to the pay^t. of this rente, by her marriage contract, q^d gives her the enjoyment of this house as her Dower -

That her undertaking in the Sale of the house to Gerard to pay the annuities of the rente then due so as to exonerate Gerard cannot raise a personal Debt w^{ch} Def^{ts}.

That Plff must justify, that Ch^e. Lemaire J^r Germain was alive at the time of bringing the action - the rent being constituted only during his life, & therefore party claiming under it must show that he is alive - Rente. N^o. 257.

Wife for Plff.

That the charge is reelle - & if it were not real, yet the Def^t. is bound to pay the annuities thereof during her possession - Lacombe. vs Dette. Sec. 1. N^o. 2. 3 -

The undertaking in Germain's contract is a proof of debt at Def^t -

That when a man is absent, he is presumed to live an 100 years - & who alleges his death must prove it - Plff besides produces several of Ch^e. J^r Germain's letters since 1804 which show his existence -

Martin
Simmonds
&
Foretier,
Lamothe

On oppositions of Lamothe & Foretier -

Beaubien for Plff - objects to the claim of Foretier for Lois & ventes for the decret.

Bedard for Opp^t Foretier - Decret, as a decret volontaire is null as the necessary formalities have not been observed -

Polk. Cov. p. 270. - Fer. Decret. vs Decret volontaire -

Perrault
v
Aucclair
+
Namur
Inters

On attachment of sundry effects seized as goods of
Def^t. - claimed by Inters party as her property

Wigé for P^lffs party - says, that in consequence of
her Renunciation to the Count^y between her & the Defnd
she is entitled under her mar. Contract to claim the effects in
question being the effects reserved to her as prop^r by her own
contract, being the identical articles bot. by her to her
husband, ^{by succession} - etc - Poth. Com. No 207.

Rollin
v
Bouhillier
Coutellée
Oppt -

On rule to show Cause why Sheriff should not
make return of the monies levied on the Sale of the
land taken in execution by him -

Munger
v
Dunning

action by 2 partners ag^t a third to render an account of
the effects of their partnership -

Stuart for Def^t. Declaration contains demand to render an
account & also asks money Counts - for q^d: there is no proper
conclusion - That the P^lffs cannot have this action, as
they do not show that their joint part^o had terminated

That the Plff. have different rights in the Partnership, & cannot join in the same action as Def^t. - The termination of the partnership terminates their joint interest -

Ross for Plff. That it is sufficiently stated in the declaration that the Part^r was at an end - but this action can be had even during the partnership - Rep. de Lemp. v^e Societe. -

That partners can join in this action - see Park. Soc. p. 582. N^o 34
Rep. v^e Societe. p. 153. to 155. -

p. 582. N^o 34 & 5.

Hervieux
Sanguinet } action for Pension -
nothing said by Def^t.

Seabrook
Lewis^v - } action on 2 promissory notes & for goods sold
Stunt for Plff. proof of number of skins from
testimony of a witⁿ who was employed by Def^t -

Ross for Def^t - an indorsement struck out on the note ought
to be allowed - Plff. no trader - no driver - testimony not
sufficient. -

Friday 19th April 1811. a

Todd & Gill
Burtou.

Interlocutor ordering notice to be given of the contest between the parties to the Crown —

Bosson.
Heath.

Judgt for £25. 10.

Martin.
Simmonds
Foretier.
claim⁺

The claim of Foretier dismissed. —

Donegani
Desnoyers.

Award of the two arbitrators homologated —

Peltier
Morne'

Interlocutor for proof —

Beaujeu.
Jackson

Plapp. demand granted only for one Lot & ventes. —

Dubois
Laplante

Judgt.

Munyer
Dal.
Dunning

action sustained

Saturday 20th April.

Rule of practice respecting taking answers to facts & articles

Itagar. -
Lindsay }

Plm can returned to admit party to move for verment Supp.
upon part of his demand not commercial. —

Adam. -
Merrill }

action dismissed —

Gueroite
Willemain
Epers & Brant
Appart — }

The Court were of opinion that the claim of the Epers
of Brement could not be entitled to priority of mortgage
the receipt upon the original obligation by Brement
operating a novation of his debt. —

Provencher
Hennion. }

Judgt. for £25 + costs. —

Hays dwp
Tressler - }

Judgt —

Blackwood lue
Lacroix - }

Action dismissed — Want of notice to Drawer of note —

Albert de Gaspi
" Brunelle

on question of discussion of original debtor by Puff-

June Term 1811.

Dom^t Rex.
Jonathan Gorham

On application for a Habeas Corpus -

The Prisoner was detained under a commitment for a felony in stealing & carrying away wood & timber from on Papineau.

Stuart for Pris - The charge not on oath - The circumstances do not amount to a felony - The property not taken by Pris - not taken feloniously -

Monday 3^d June 1811

I was absent

Tuesday 4th June 1811

a holy day

Wednesday 5th June 1811.

Dominus Rex.
Jon: Gorham

On Habeas Corpus.

The Pris: was detained on a charge of Highway robbery -
Sol. Gen. etc. Salt. 821.

Bourdeau
Tristewale

action for board &c -

Rolland for Plff - règlement de compte pleaded - order for proof.

The acc^t. filed not proved - refer only to sums rec^d. by Plff to Def^t -
The transaction between the parties was made subsequent to the
settlement of their acc^t.

Peltier

or
Mornage

action de bornage. -

Vici for Def^t - admits the voisinage of the lands, but contends
that as Def^t: holds that part of the land which adjoins that of the
Plff as an usufructer, the action ought to be decided as the real
proprietor & not as the Def^t -

Rolland for Plff - The Def^t: sold to Plff, & is bound to fulfill
his title -

Marchand
Lebert.

On award.

Sacrox for Dft. Report irregular - no int? exp? - nor delay
given for hears them -

Monday 10th June 1811.

Upham
Papineau

Plff stated himself to be late of Windsor, in the United States
now at Quebec, labourer. - Dft. moved for security of Costs -
Plff o. it had been determined in case of Beebe v Gilman - this term
that where Plff states himself to be ~~late of a foreign country~~ ^{resident in the Province}, he is
presumed to be a ~~foreigner~~ - domiciliated there & the party alleging the contrary
must prove it

Beebe
Gilman

on mo. for adduction of testimony *ex parte*. no plea has been filed
within the time prescribed by the rules of practice - The case was
that Defend^t ^{appt. on} ^{12 on the} moved that Plff sh^d. be held to give security for costs, he
being an alien, although stated in the Declaration to be resident within
the Province - The Court were of opinion that this allegation sh^d. first
be made out by the Defend^t. before the Plff sh^d. be held to give such
security, & gave to the 8th to make proof thereon - On the 8th. no proof
was adduced, & on the 10th the Defend^t tendered a plea to Plff, q^d. he refused
alleging it was too late & stating that the allegation of Plff being an alien was
made at the risk of the plff, & being without foundation he ought not to benefit
by it, & that his plea ought to have been filed in the usual course - Dft. by Ross -
says, if he had filed his plea pending the discussion for security for costs he w^d. have
lost his right thereto, as has been already determined - *Worthington v. Barber*. 1 ap. last.

* Steam
Ramy June 1810

The Court consid. that
Defend^t. ought not to benefit
by the delay arising from
a frivolous allegation
& that his plea ought to
have been filed saving
his right to the security
for costs - Plea rejected
& Plff. mov. granted.

G. W. Hamilton
Amg. W. Laughlan

action for damages for the non-delivery of a certain quantity
of Oak timber under Contract -

The contract admitted deed for delivery of 8000 feet oak
timber -

Wm Jackson. In July last oak timber sold for 2/3 at Quebec & cubic foot

Geo. Aubry. Same evidence -

Plffs evidence closed.

The Defend. offered testimony to show that by accident & the act
of God he had not been able to deliver the timber - Rejected by the
Court as not being a defense to the action -

Verdict for Plff. £700.

Cameron
Baker -

action for recovery of damages for detaining certain timber

Rule obt. by Plff. to show cause why certain masts sh^d. not be
deliv^d. up to Defend.

Order. in Def^d. - The Plff swears only to 69 pieces of square
oak timber - more than 100 are seized, besides a large number ^{of masts}
not stated in the affidavit -

Reason for Plff. - as it is uncertain ~~to~~ what the value of the
other wood seized, the Plff could not seize less than might answer
his damages -

Colvert
Woolsey

action of assumpsit for Wood sold by Plff to Defndt -

Order for Dfdt - There is no proof of Plffs demand - Dfdt. has pleaded non-ass - Dfdt. has also pleaded - delay - until a certain prior prosecution had been made -

Stuart for Plff - Defndt. has pleaded two contradictory pleas non-assumpsit - and payment - The paper stated by Defndt. in his plea not sufficiently set forth - not stated that it is for the same debt as that here prosecuted for, or that it was asserted so as to bind Plff

Young -
Blackwood
claimants

Order for Chas Smith. Decided costs on dismissing Plffs claim by Plffs

Daly -
Walton -

On Dfdts rule why action shd not be dismissed as Plff had not filed a power of atts, he being an alien - under rule Prae.

Sec. 14. p. 28. -

Stuart for Plff - The power was filed at time ^{of} took off default - therefore Dfdt. had no right to complain - nor action liable to be dismissed on this act - as a day can be given by the Court to file such power, & on default of doing so after such delay only, can the action be dismissed -

Sherwood
M. Adam -

action on promiss. Note -
Boston. for Dfdt - action is prescribed -
Ross for Plff. there is no prescription -

Marcille }
Adam } Action de partage. —

Tuesday 15th June 1811.

Beebe }
Gilman } Plea rejected as too late — ought to have been filed
on day fixed for examⁿ of wit.^o —

Dale }
Walton } The Court were of opinion that the p^r: of Ctts ought to
have been filed at the return of the process, and it was too
late at the day when default was taken off. — action dismissed

Cameron }
Baker } The writ being to attach all the goods effects generally
of the Defend^t to answer for a certain debt, the application
to discharge certain part of it cannot be granted as the
Court cannot see to what amount the wood seized is —

Waitzal }
Papineau } On defend^t's motion that Plff's action be dismissed
he not having given security within 2 days (according to the
rules of practice) after the order made for giving such security
The Plff had the security ready in Court, & offered it immediately, & states that
one of the securities was sick yesterday, otherwise it would have been given then —
The Court agreed to receive the security —

Spinard }
Dumont }
no

Indeb. ass^t for wheat due to Plff for wages as miller to Defend^t.

Sender for Plff - states that the action is founded on a relement de compte made and signed by Defend^t.

Kollaud for Defd^t - The relement de compte signed by one of Defend^t's only - and made with one Spinard, w^{ch} may be any other person than Plff -

Merchison }
M^r. Donnell }

action en separation -

Papineau for Dfct^t - action for a sep. de corps & de biens - allegations of sevier in the Declaration not sufficient - one part of ill treatment only stated out of 17.

Denist. v^e separation - Fer. Lb. -

Ross for Plff. Sufficient facts alleged -

Dessaberes }
Hobart }

Plff. mo. to send back Com. Rog. for exp. of Def. on facts sent. to the Commission to amend their proceedings, by obliging Defend^t to sign the answer given by him to the Interrogatories -

Stuart for Defd^t - Cannot be granted - delay will be incurred - Plff ought to have attended to the due execution of his Commission - or should have sent sufficient instructions to this effect. +

Lacroix. }
Paris. }
Paris. }
Robitaille. }

One Petitory action by Lacroix to recover the poss. of a house belonging to him -

Boston for Defd^t says, that he was put into possession of the house by Robitaille, whom he has called in as his Garant

Stuart for Gert - No ground for action en garantie formelle
apt Robitaille - Only a personal undertaking of G^t might make him
liable to damages but no right to the property is brought in question -
Pl^{ff} had notice that he would not be maintained in the possession of the house of the Pl^{ff}, therefore there will be no action
in guarantee.
Boston in reply - The enjoyment given by Robitaille to Paris in the
house, conveyed a title to that house during his life, which was a servitude
created upon the property, & therefore the action de garantie lies, when
this enjoyment is disturbed -

Berthelet
Munn -
E Contra

Action for work & labor - on award.

Boston for Def^t In the arbitr. bond - no difference stated for decision
therefore null - no power to award money to Pl^{ff} - The award made
subsequent to the day limited, & therefore void -

Rolland for Pl^{ff} - Points in difference stated in Bond - Evidence contradictory
as to making the award. -

Wagner
MKinstry

On rule nisi, why ~~certiorari~~ ~~mandamus~~ ~~certiorari~~ ~~mandamus~~ certain papers
~~was~~ not ~~been~~ filed at return of process as req^d by rule Practice
sh^d not be rejected from the files as irregularly put thereon -
Stuart for Pl^{ff} - papers were filed at time default was taken off &
before Def^t entered an app^l -

Wednesday 12th June 1811.

Berthelett
Munn -

The award set aside ~~the award~~ as irregular, ordered a new reference to other arbitrators. ~

Desrivieres
Hatt -

The Plff admitted to remit the Com. Rog. to the Commissioners to perfect the answers of the Defendts. by taking his signature to his answers on faits & articles. ~

Colvert
Woolsey -

Action dismissed - under the agreement taken by Plff to suspend the action until legal course should be had on the draft the Plff accepted from Def^{ts} -

☞ sure as to discharge of Def^{ts} from Gaol -

Merchison
M'Donell -

Parties admitted to proof.

Spinard
Dumont -

Indt.

Wagner.
McKinstry -

Defendts motion granted ~

Abraham
Fisciau -

Action pour lesion d'outré moitié. ~

Ordered for Plff - states that testimony adduced by the parties is contradictory - therefore prays that Experts may be named - as the law seems to prefer this mode of ascertaining the fact of the value of the land -

Berthelet
Engrignon
Dupond

Action to revoke a Donation - to take back the property given -

Wigé for Plff. Complains of non-compliance with the terms of Donation
Lacombe vs Donation - &c -

Render for Defdt - Action not founded - facts not proved -

Peltier
Fissiau

On sufficiency of the moyens de faux -

Beard for Defdt - alleges, that moyens de faux are insufficient, & he ought not to be admitted to make proof thereof -

Cartier
Cormier del
Gueroite
1st Gormeau T. J. del
Interv.

On Intervention of Gueroite claiming part of the monies in the hands of the Tiers Saisi belonging to Cormier, pere -

Leveque for the Interv. party - states, that he is entitled to claim his proportion of the monies in question, as Creditor of Defend^t the 1st Defend^t being in a state of deconfiture unable to pay his debts -

That all the objections raised to the Intervention must be determined by the fact whether P. Cormier pere is insolvent or not, except that q^h states, that the Intervention ought to have alleged that all the persons named in the Obligation to Gueroite was insolvent as well as Cormier, pere - q^t. is not necessary as all are solidaires -

Ross for Plff. The monies in the hands of the Garnishee belong to the two defend^ts under a partnership or joint concern between them - but Mr Gueroite is a creditor of only one of Defdt^s - therefore can have no right to the money. -

Roi.^{ca} }
Piccard } on rule nisi - for Exon.

George for Defdt. an Exon has been returned with
an opposition annexed, q^t has not been discussed - & q^t must
be first done before a new writ issue. -

Beaubien. app. & return made six years ago - therefore

Terrien.^{ca} }
Oakes.^{ca} } On rule why Ca. Sa. should not be granted ag^t
Defend^t -
Nothing said -

Monty }
Goquet } On rule why Ca. Sa. should not be granted ag^t Defend^t -
Berard pour } in consequence of - nulla bona return ag^t other property of Def^t -
reprise d'int. } and at same time an alias Exon ag^t the goods chattels ^{own} of
Defend^t -

2 Bouillon. tit. des Exon. p 705. p. 8. art. 39. - 40. - 41. -
Poth. Proc. Civ. part. 5. ch. 1. par. 8. p. 31. 12° -
Ord^e 1667. tit. 34. art. 13. -
Bornier sur cet article. -

Friday 15th June 1811

Witness day

Upham v
Papineau

The Defend^t moved that Plff^s action should be dismissed
1st Because no power of atts has been filed for bringing the
action, they being aliens - and
2^d That Defend^t lives in the parish of Chambly & not in
Beloeil, as wrongfully alleged in the Declaration -

The Plff^s answer, that on the day of the return of process, the
Defend^t moved for security for costs which suspended all -
further proceedings, whereby the Plff^s were precluded from
moving for a delay to file a power of atts under the circumstances
of this case - That having this day given that security, they
now stand in the same situation they were in at the return
of the process as to their right of moving for that delay, &
therefore now pray that it may be granted to them accordingly
Objects to answering to the second ground of Defend^t's motion
as the first objection raised by him ought to be previously disposed of

Deshautels
v
Leduc -

Plff moves to discontinue cause without payt. of Costs - as a
reason states, that the record has been in part lost or mislaid
so that the parties are prevented from proceeding in the
cause

ell. Vige^r for Defend^t - That mo. cannot be granted - the Record
in this cause may be completed - the Defend^t has an interest that
it should be so - and it has been determined that where the
Record is incomplete a party cannot discontinue his cause - etc
Case of Roi. v Lafleur. -

Upham & al'
 v
 Papineau

The defendt. moves, that action be dismissed, as no
 p^r. of att^y. has been filed to warrant the institution thereof

Stuart for Plff. The Plff is stated in the Decl^r to be resident at
 Quebec, and therefore not bound to produce any power of att^y. #
 That the att^y. in this cause is porteur de pieces, which is a
 sufficient authority to institute an action - That this is diff^t
 from the demand for security for costs, q^d. must be given in
 all cases where the party is not resident within the Province

The Defend^t. in answer answers, that Plff states himself to be
 late of Vermont now at Quebec - upon which statement the
 Court has already determined in this Cause, that unless the
 Plff could shew that he is now residing at Quebec, he must
 be held to give security for costs - That Plff having waived
 this proof and given the security required, he must be presumed
 not to be resident at Quebec, but to be an absentee, & therefor
 liable to produce the power of att^y. required -

The Plff - The waiving of proof upon any particular point
 cannot be taken against them upon any other -

Saturday 15th June 1833.

Hamilton del
v.
McLaughlan

On Defendants mo. for a new Trial

Order for Def^t

1. The Court refused to admit evidence in support of facts alleged by the Defend^t in mitigation of damages - altho' admitted by the Intercator of Court to make such proof

2. One of the Jurors was under age - & not a householder -
Sol. Genl. for Def^t

The Court ought to have admitted the testimony offered by Defend^t in support of his plea - It is a principle, that in every action for recovery of damages - evidence in mitigation may be given, where it cannot be pleaded. Tr: Du Pais. p. 241.

Bul. N. P. p. 59 -
153 -

12 Ann. ab. tit. Evidence. p. 158. 159.

Nature of evidence - Def^t possess^r. of suff. wood to fulfill his contract - his exertions to transport it to Quebec - his misfortunes - & good faith of Def^t -
Fact of sh^d have been before the Jury - & g^t might have induced them to a more favorable verdict -

The Jury were not competent to determine the Issue - only 11 qualified - Proctor a minor & no householder could give no verdict even if not objected to - cito Ord^r 1785. sec. 15. -

4 J. Rep. 473. Stainton. v. Bredle

1 Tredds Pradice. 524 -

Barnes Notes. 453 - 454 - 456. -

Stuart for Pl^{ff} - The Jury have no discretion to mitigate damages in cases of Contract, only in tort - But the evidence offered could not go in mitigation - for all the facts alleged even if admitted or

or proved could not have mitigated or lessened the damage really sustained by the Plff. - The authorities cited, not applicable -

The objection to the Juror is too late after he is sworn -
cited. 2. Tr. & Pais. p. 200 - The intention of striking Jury under notice is to give the parties an opportunity of inquiring into the condition & qualification of the Jury - and to admit an objection to a Juror so struck, to be made after verdict, would render trial by Jury uncertain & dangerous - No authority cited can come up to this case -

Monday 17th June 1811 -

Roi. &
Piccard }
}

Rule nisi absolute. -

Deshautels
Leduc - }
}

Motion rejected -

Upham.
Papineau }
}

Delay granted for evidence to fifth person

a day granted to Plff to shew he was authorised by Plff in person to bring the action at time he was within the Province -

Upham & L
Papineau }
}

a delay granted to Plff to produce power

Hebert
Guerin - }
}

Plff. mo. for hearing on merits on obligation - Defs. pleaded payt -
On day for enquiry - Defs. produced subpoena by 4th of app^d that one of
wits was absent at Quebec & the other did not attend -

Hamilton v
M'Laughlan

Rule for New Trial discharged -

Colvert v
Woolsey

on Defend^r's mo. to be discharged from Gaol -

Stuart for Plff^t The Court has no power over case - Judgt. rendered party can only have his Exon^r or that Judgt. - Rep. v. Judgt. -

Such order w^d be depriving Plff^t of his right - he could have no remedy - Party entitled to appeal within 15 days - at expiration of w^{ch} only the Defend^r can be released if such appeal be not sued out - Defend^r can now be released only ~~under~~ ^{under} Exon^r ~~from~~ that Judgt. -

Order for his discharge -

Doms. Rep
v
Lemai

action for trespass on Crown lands -

Sol. Gent. prays Judgt. on proof adduced -

Ross for Defend^r - action grounded on poss. in the Crown - no proof of such possessⁿ in the timber in question - There can be no trial of title in this case - although Defend^r have a right thereto - Hence therefore the Crown must prove a poss. in the chattel they claim - No proof that the timber was cut upon Crown lands -

Sol. Gent. in King v Baker - dotho same case determined in favor of King - where wood is cut upon Crown lands the possⁿ of that wood is so considered as the King's, that Defd^r must show a good title to it if he take it -

Evans.
Clarke
Foretier
Opp^t

On Opposition of P^r Foretier -

Beaubien for Opp^t. Opp^t: on claim to be reimbursed
the principal of a Rente Constituee under sale of lands affected
~~for same~~

2 Par. Jan. p. 271. - on Rente Const. Creditor can claim the
principal when Debtor of the Rente becomes insolvent -

Rollenud for Dfd. It is not the fund bound for the Rente 9th
has been sold, but another land upon 9th Opp^t. has his hypothec
cannot be held in law
Poth. Const. art. 3. n^o. 43. & 48

1. Bouyer. lit. 8. ch. 1. sec. 3. n^o. 22 - 24 -

Maloche
Dezery

action of trespass in cutting wood on P^rff's land -

Papineau for Dfd^t

Beard for P^rff. Dfd^t claims a right in the deed of
concession of ~~putting~~ down wood in P^rff's land - Dfd^t has said
had no right to make such reserve - nor to take what wood
where he chose -

Papineau for Dfd^t - Edict of 1711 - Communiatory only -
If in force & action not regular as P^rff holds under a title
wh^{ch} surreys it - he ought to have applied to the Crown to obtain
a diff^t grant of it -

Uige' for Dfd^t - many reserves on land are adressed to have
been legal - such as Corvees - Retrait Conventional - see
the plea of cutting wood was in the choice of Dfd^t

Bedard for Plff. such clause is illegal - Corvies illegal. being a
mode of selling lands - The law not Communitary - Just^s
shown of reunion of lands in favor of Saig^r

Who bears servitude has the right to point out when it shall be
borne -

Lebaney
Quintin
Med^r Parrot
Lamothe

On app. of Mad^r Lanet -

Bedard for Plff. ^{Lamothe} On question of priority of Mortgage - Plff claims
under right of Defend^t wife on estate of her husband - for debts contracted
by her jointly with her husband - Obligation by Touchet & wife to Lamothe 14 July 1798 -
marriage between Touchet wife & Aug^t 1787 -

Poth. Com. N^o 766 - Art 237. Cout. Glos. 1. §. 3. N^o 26 - 27.

Lacroix for Opp^t - <sup>Parrot, claims mortgage from date of Touchet's appointment as Tutor to her
on 23 April 1792. prior to Lamothe's obligation -</sup> That when wife has a knowledge of the prior
mortgages of the husband, she cannot give preference by her signing,
to a subsequent creditor - That it does not appear that Defend^t
wife was renounced to the Community, in g^h can only those claiming
her rights can exercise them -

Rolland - If the Community has p^d the debt, the wife can have no
indemnity of the estate of her husband - The wife, as her representatives,
sh^d be parties in the cause so that her rights might be discussed -

Bedard - If wife has accepted the Com^mty. yet she is entitled to her int^r community
from half of debts thereof contracted jointly with her husband -

Hagerman
Munn

Action for wood sold to Defend^t

Plff admits deduction from his debt of - about \$4 - for a Just^s & Saig^r
arrest in hands of Defend^t for one Hunter, but contends that cost is
making proof on the debt sh^d not be allowed -

Prays cost an incidental demand -

Boston for Defend^t - entitled to incidental demand if not thereon -

Mowatt
Swan

action in deb. ass. for certain bills of Exch^t

Stewart for Def^t - On Excep. to certain counts in pliff. Debit
states, that Pliff has adopted mode of draws his deb^t according
to English forms, every count ought to contain a distinct demand -
but the material part of the Count has been omitted, where it is
by "means whereof Defend^t became liable - & promised devertook

Tuso
Brownson

Indeb. assump^t for goods sold.

Ogden for Def^t - Rum was sold to one Stewart not to
Defend^t - ent^r is in the Pliff's books of ac^t Bill of parcels
sent to Stewart -

Wagner
McKinstry

On rule to set aside an improper alteration made in
an order to exp. Def. on facts last -

Stewart for Pliff - change made on motion before entry in the
Prothyp. book -

and
Allison
McKinstry

Same rule & answer

Hanna
Jackson

On mo. why an attachment sh^d. not go against the Defend^t.
if by resisting the Surveyor in carrying into effect the Dec^t.
of the Court -

Lacombe
v
Laparra

Action for goods sold -

Ross for Plff - contest respects a hoghead of beer - withdraws answer thereon - & discontinues demand for the beer - sum tendered by Plea only made out - but not offered before therefore ^{not} ought to pay costs -

Beaubien for Defen^t - Plff ought to pay costs, as sum tendered was never demanded -

Auld & Lange
v
Georgien

on rule why Ex^{or} sh^d not issue as Defen^t - on Jud^t obtained a^g him -

Georgien for Defen^t - Mr Vige' att^r prosecu^t Cause - a new att^r has been named - Mr Borton, contrary to Rules of practice -

Return of service of rule does not specify the hour of service - Pleas pay^t & files Jud^t of Distr^{ic} in support of it -

Borton for Plff - The authority of former att^r ceased ~~with~~ Jud^t was rendered - not necessary to specify hour of service - agrees to admit the amount ment^d in the Jud^t of Distr^{ic}tion

Tuesday 18th June 1845.

Childs & Lange
v
Georgen

The return of the service of the rule appearing not to mention the hour of service, the Court rejects the same as insufficient.

Sawmbe
v
Lafarre

Jud^t. for tender with £2. — Cots —

Mowatt
v
Swan

Defend^t. exception dismissed — the Court maintained the Declaration as sufficient.

Juro
v
Brownson

Action dismissed.

Wagner
v
McKinstry
and
Allison
v
McKinstry

The Rule was made absolute.

Magarvey
v
Munn
& Contee

Jud^t. compensating principal demurred with the incidental demand as far as it goes, & ~~giving credit~~ for the balance of the incidental demand. with Cots to the incidental Plff.

Hennion
v
Provender

Defend^t. moves to dismiss Plff. action for not proceeding to trial. —
2 Todd. p. 699. — Rules Prac. not applicable —

George for Plff. — Defend^t. has concluded to July, & ought to have proceeded to trial ^{lost down again for trial on 16th}

Bricault.
Bricault.

On pliff mo. to explain an answer given by Pliff. on the facts part.
Bedard for Def^t. Objects to it as irregular.

Molloy.
Mettot.

action of ~~assumpsit~~ ^{on contract for delivery of wood & for goods sold.} for goods ~~delivered~~ sold.

Boston for Def^t. That Pliff has not performed his part of the Contract & therefore ought not to sustain his action -

2 Bl. R. 1312

Comp. 56

Doy 690

5 Mass. 387

5 Conn. Dy. 622

Severell for Pliff - when parties have separate & independ^t. Contracts, the failure in one by Pliff is no plea to his action for the non-performance of others by Defend^t - Besides the non-performance alleged on part of Pliff not sufficiently set forth so that Pliff can sufficiently answer them -

Bricault.
Bricault.

Action for arrears of rente & pension.

Bedard for Def^t dems that articles demanded are due, particularly the wages & board of servants.

Turner.
Hitchcock.

Action on Promissory Note.

Ogden for Pliff moves for Judgt -

Drouin
Meloche

Action ag^t Defend^t. as late Tutor of Pliff to render account of his gestion -

Bedard for Pliff -
Action particularly to set aside a receipt given by Pliff to Defend^t. before receives any acct. from him - g^t he contends to void & null -

Poth. Personnes
p. 622.

Domat. l. 1. tit. 1

Sec 3. p. 180. N. 41

Rep. vs Compt^e

Acct. rendered insufficient - not in form, nor regulated yearly
Lacourbe. vs Compt^e - so as to convert the interest accrued into a
Capital bearing interest -

L. M. Vigi for Def^t - Defend^t. has rec^d. an acct. to the other children

older than Plff, in q^t is included the share of the Plff. q^t aut. has been recognised by Plff, and the amount due to him thereon paid and a discharge given to him - This amount & discharge was made & given 10 years ago.

Bédard in reply - The acc^t. rendered by Def^t was made to the other children in 1794 when Plff was a minor & he came of age only in 1804. therefore the Plff cannot be bound by it -

Wednesday 19th June 1811.

Marchand
Lebert. } New Rule to Experts -

Monty.
Goyret. } Rule ab. for 2 Ex^{ts}. -

Bricault
per
Bricault fil. } Just. -

Drouin
Meloche - } Interlocutor - admitting Def^t to prove acc^t. to have been rendered by him as acknowledged by Plff in the receipt given by him to Def^t. before Gagne, Notary, on 30 Sept. 1800. ~~XXXXXXXXXX~~

Molloy.
Métrot. } Plea adjudged insufficient - & by indulgence admitted to plead over -

Bordeaux^{duy}
Finsterwal } Just^t

Berthelot
Munn } New Reference to Experts -
E Contra }

Hannah
Lackrou } Rule for attacht. scrib^o

Berthelot.
Henriou } Dismissed. u

Perrault
Aulaine } Just^t -
Cadieu
Robert. Inter^o }

LoBiniere
Forbes } —

Thursday 20th June 1811

Seabrook }
Lewis } Just.

Shewood.
Madam { Parties admitted to proofs -

Cartier }
Cormier } Intervention dismissed -
Gueroite }
Intevs. }

Deneaut.
Cuvillier } Attachments discharged -
Labelle }

Caron }
Rochon } Plaintiff to furnish a particular statement of objections to aut. rendered

Peltier }
Moray } Moyens de faux dismissed as insufficient -

Lacroix }
Paris } Interlocutor -
Robitaille }

Hennion }
Provencher } Defend. mo. dismissed -

~~Garcia }
Hervieux }
Hervieux }~~

Lacane
Bunby } Def^t

Colvert
Brisbin }
Odell & Caroline
Garnishes }

The Garnishes, after two defaults of him, moved to come in & make his declaration, upon affidavit that he was from home when process was served, & did not return thither till it was too late to prevent a 2^d default could be ent^d of him -

Monday 17th June

Evans
Clarke }
Forester off^t }

Cont^d

On 16 Dec. 1801. by act pass^d. before Chaboillez Not^y. one Ch^s Piccard, sold to Def^t a certain lot of ground in the S. L. Sub - That it was a condition of this sale that 500^{rs} part of the consideration money sh^d. remain a Constitutⁿ in the hands of purchaser.

That on 14 Feb. 1801, the said Ch^s Piccard sold to Def^t. a certain other lot of ground in the said Sub. upon condition also that 500^{rs} part of the considⁿ should remain in the hands of the purchaser on Constitutⁿ -

That on 19 July 1802, one Andre' Bozureau sold a certain other lot of ground in the S. Suburb. on condition that 1500^{rs} the consideration money sh^d. remain on Constitutⁿ in the hands of Purchaser.

That on 22 March 1803, the Def^t. by act passed before Notaries undertook & promised to pay to the oppos^t. the rente accruing annually upon the aforesaid three Constitutⁿs, making in all a sum of 130^{rs}.

That since the said purchase the Def^t. has subdivided the said three lots of ground into six lots, and has disposed thereof to different persons, for a certain sum of money - without declaring them to be subject to the Constitutⁿ for g^t. he purchased the same or to the rente thereof - The oppos^t. is therefore entitled to claim & receive the principal of the said three constitutⁿs, by reason of the alienation so made by the Def^t. out of the other lands of the Def^t. now sold by the Sheriff, upon g^t. the off^t. had his hypothecue

Plea - That for the cause stated in the oppos^t. the off^t. is not entitled to the reimbursement of the principal of the Constitutⁿ -

October Term. 1811.

Tuesday 1st October 1811.

No other business than the motions before the court

Wednesday 2^d Oct. 1811.

Deschambault

Ross

on Def^t: mo. to quash writ -

Bedard. for Def. mo. founded. on Sec. 7. art. 8 of the
of Proc. which ~~requires that~~ ^{confers privilege on} Def^t: to answer to Pl^{ff}: demand without
being sued by writ -

Court were of opinion, that the Def^t: could not quash the
writ, as the privilege was not granted to the attorney but to the
party suing him -

Drummond

Goodall

on Promissory Note -

Pl^{ff}: moves for Judgt^t - on proofs adduced -

Campbell

action possessoire -

Pl^{ff}: asks Judgt^t on test^s. adduced -

Stuart. for Def^t: says, there ought to be no damages allowed
to Pl^{ff} - as Def^t: has done a beneficial act to Pl^{ff} by cutting
down the woods in question -

Thursday 3. October 1811.

Mowatt

~~W. Swan~~
Swan

Plff moved for a further day for a return to a Com. Rogⁿ sued out by him - & the Rule for trial by Sp. Jury to be now enlarged till 12th inst. -

Granted on pay^t. of Costs -

D^r. Wait

Angus McLaughlin

Bail appⁿ. in Court and surrendered Defend^t. stating that he was then in custody under process at suit of another person -

Rolland for Def^t. objects, that he has had no notice of motion that there can be no surrender of Debtor without bringing him into Court, which must be done by Hab. Cor. where he is in custody - cites Todd's prac. - Lastly that as there has been an assignment of the bail bond the Surrender, even if regularly made, must be done upon pay^t. of Costs - under Reg. Prac. sec. 8. art. 5. -

The Court were of opinion that no notice of Surrender was necessary - and cannot always be given with safety to bail - When it is certified by the Sheriff, that the Def^t. is in his actual custody, the Court do not require his being brought into Court, the practice is not followed in this Court as laid down by Todd - and as to the Surrender being made after assignment of the bail bond, it must be granted upon pay^t. of Costs -

Pomeroy
Moore -

Defdt. mo. for delay to plead, under affidavit that the papers relating to the transactions between the parties - that he has good & suff. grounds of defence as^t action founded on d^r papers at Burlington That Dft. was absent from home at time of service of process & obliged to go to Quebec - That without d^r papers he cannot plead -

Johnson
Walker -

Oly. Not stated what this defence will be, nor what the papers are or whether they have any reference to the Can.
On Defdt. mo. for delay to plead, as Dft. was absent when process was served - of. was done 2 or 3 days before the commencement of the term. -

Ross. Defend^t absent not suff. excuse for delay - he ought to 'attended' or get persons to attend for him at his house to answer legal demands made of him. -

Davies
Hamilton

On Defdt. mo. for time to plead - Defdt. lives at Quebec was going to Up. Can. & arrested en his course by Plff - all his papers are at Quebec - delay asked till 1st Dec^r -

Opposed by Mr Ogden for Plff. -

Davis
Allison -

Same mo. by Dft.

Jⁿ. Bunker
Dan^e. Stearns }

Trial before a Sp. Jury - action for Damages
for running Def^t's Stage & horses ag^t Pl^{ff}'s Calash

John Lay - was in Calash with Pl^{ff} - Def^t's stage drove by
his Servant Cameron came up behind driving very quick - Pl^{ff}
drew to one side near the bank of the River so as to leave room
for the Stage to pass - Driver crossed road came ag^t Pl^{ff}'s horse
forced her down the bank, & hind wheel of Stage coming ag^t
Calash threw it & mare over the bank with Pl^{ff} & wife thinks
they fell 25 feet - bank is 10 feet high - Pl^{ff} was much
hurt & complains of injury in his Stomach - Calash was
broken the Pl^{ff}'s mare hurt & the harness injured - Pl^{ff}
has been unwell ever since & unable to attend his business
was building house at the time, & he was unable to attend to
& estimates injury at 1000 dollars -

Jesse Ames - was driving Pl^{ff}'s Calash, wth Pl^{ff} & last that
in it - same testimony as that of Lay -

Samuel Andrews - about the end of May last, was on
the Chumbly road at time when Def^t's Stage passed the
Pl^{ff}'s Calash - Same testimony -

Chas. Beauvais Gawwin - Pl^{ff} injured in his health
by the accident & since unable to attend to his business.

Jⁿ Wilton - Def^t is in a good way, keeps a number
of horses & does a good deal of business. -

Defend^t produced no Wit^{ne}
Verdict £30 - Costs -

McMillan
Chesser

attention of Def^t. as Indorser of a Note -

Ross for Def^t - Plff has not made necessary protest
nor given notice req^d -

Rose Lux
Hamelin

action for arrears of pension -

Def^t. no proof that Def^t. is Debit -

Friday 5th October. -

Smith call
Pell.

Gale for Def^t. moved that this action be dismissed
~~with~~ without of Security for Costs -

Stuart for Plff. contends that Court cannot dismiss the
Plff. suit under the rule of praec. as the only penalty
inflicted by the Stat. in this case is a suspension of
proceedings -

Action dismissed. -

DeLozbiere
Forbes

The Court were of opinion to admit the testimony offered
to be made by the Plff. inasmuch as the testimony adduced
by Def^t: tends to make out a justification, which he has not

Hagar
Lindsay } Plff. moved that Plff. Serment supplémentaire on
such parts of the demand which is not of a
mercantile nature. —

Boston for Defd. objects that a similar mo. was already
made in the cause & dismissed on the 4th April last
& cannot be reiterated —

George for Plff. — The Court considered part of Plffs
demand as not of a mercantile nature, & after
final hearing handed back the papers for Plff to
complete his proof thereon —

Johnson
Walker } The Court granted delay till Monday to plead —

Davis
Hamilton } Delay granted till 1st Nov. to plead

Pomeroy
Moore } Mo. ~~objected~~ — granted till 1 Nov. —

Beaujeu } Action for Seigniorial rights — Poth. Tratté. p. 152. —

Delisle } ~~Lapineau for Defd.~~

Beard for Plff. — action on sale by father to son for pay^t
of which son agrees to pay a rente & pension — such act bears Lois
etc. Poth. Tratté. page 152. —

That

That Plff is entitled to load upon rente & pension not on 1000th
cts. Prid. lv. 3. ch. 5.

Papineau for Dft. The act in question is not an act of sale
but a Donation by Spalher to his son in consideration of a
rente & pension - cts. Prid. lv. ch. 37.

Veign. cts. case Rolland. v. Bellanger as more favorable g^t was
dismissed - The substance of the deed must regulate the law
the sale for a 1000th is merely nominal - the effectum part is the
gift of property in consideration of an annuity g^t is worth
at least 7 or 8000th - That at most the load ought to be only on
1000th -

Bedard. Prid. lv. 3. ch. 37. cited by Dft. does not regard the
present question, it treating merely to Donations - here the
deed in question is not a Donation, it being evidently a Sale -
That the rente being greater than 1000th shews that parties meant
to cheat the Juf^t - in g^t can be ought to have his load upon the
largest sum. -

St. Pierre

Garant -

{ action for wages -
La Croix for Plff - asks for Juf^t on testimony adduced -
Objects to proof offered by Dft. to shew that Plff acknowledged
that he was satisfied -

Leveque for Dft. says, that the proof offered by him does
not tend to establish an agreement between the parties, but
merely a fact -

Cheverfils
n
Taylor -

} action on deed of sale -

Stuart for Defd. - The action irregular, as the husbands of the female descendants of late Cheverfils are stated to be heirs of deceased, which cannot be supported -

Grant
n
Sawyer
+ others -

} action for negligence as conductor of a raft -

Stuart for Plff. - This action at Defd. as conductor - act. the other Defd. for not giving that assistance of - they were bound in saving the Plff. property when adrift in the river -

Marchant
n
Lebert -

} action for goods sold

Boston for Plff. - matters in contest submitted to arbiters the hon. of whose report he now demands -

Laurois - Experts are not dispensed by rule from taking oath of office - No notice given to Defd. of the proceedings had before the Experts - Experts advise Defd. to pay additional costs although the Court by its Interlocutor ordered them to be divided -

Boston in reply - Experts were sworn - Notice given to Defd. three days before meeting -

Gouin
~~Plff.~~
Meloché

} action of account -

Bid. for Plff. - Intitor. of last Term admitting Defd. to proof of his having rendered acc. to the Plff. - this proof has not been made out by Defd. - only one Wit^o produced -

M. Vige' for Def^t. - Says he has made sufficient proof an aut
undered by Def^t -

Deshauteles
Seduc. v 1

On rule nisi, why Plff sh. not be admitted to file
this exhibits anew instead of those already filed which
have been mislaid. ~~and filing~~ granted -

Allan
Harris }

Def^t. this day surrendered himself in discharge of his
bail - Mr Ross moved to enter appearance thereon for
Def^t -

Mr Stuart for Plff. Two defaults have been entered ag^t
Def^t - and he cannot now without special circumstances
be entitled to take off that default -

Court permitted appearance to be entered

Adhemar
Corrigals }

On rule nisi obt. by Def^t. why Ca. sh. not be
quashed having been sued out on an action for
damages. -

Ross for Plff. The action is for recovery of damages for
a malicious prosecution in charging him with a highway
robbery - swears to damage to amount of £300. cite, *Car*
Edg. v Ricketts - 1798. -

Stuart for. Defdt. There is no debt sworn to here - debts arise
ex contractu - but not ~~ex~~ delicto - and the debt here sworn to
is founded upon pretended damages for a personal injury done
to the Plffs -

Saturday 5th October 1811.

DeLozbinien
Forbes - { The Defdt. filed an excep. to the Judt. of Court of yesterday admitting
proof offered by Plff to be made - in this exception it was stated that
the ground thereof was, that the parties had closed their proofs - which
being contrary to the record, the Court refused to receive the exception with such
reasons annexed to it - and upon it being pressed upon the Court to have it ment.
on record, that the exception was offered & rejected - it was refused -

Marchand
Lebit - { P. V. homologated - the Court considering the content between the
parties to be more an account not requiring the ministry of
Experts, but of arbitrators - therefore it was not necessary that they
sh^d have been sworn - their being called Experts in the rule, made no
difference -

Poutriet
Decourcyne - { Sol. Gen. moves that a certain acte sous seing prive be
not admitted to be proved by Defend^t - such proof being prohibited
by St. 28. G. 3. ch. 34. Sec. 4. -

Here for Defdt. says that the paper he offers to prove is no act
within the Stat. it being a receipt for payt. of money -

Hamilton
Platt - { Defdt. upon his affidavit stating that he had material witnesses in
England, moved to put off trial -
adjudged not to be sufficient ground -

Bongarou }
" }
Cochius }

Rouillard }
" }
Pangmen }

Plff asks for Just. on testimony before Court -

Turgeon }
" }
Roberge }

Defend. says nothing -

Prevost }
" }
Pare' }

Action to obtain pos. of a lot of land belonging to the
Cure of Parish of Pointe Olivier. -

Crozier }
" }
Crozier }

on P. V.
~~Handwritten~~ Vigeur for Def. object to regularity of proceedings -
1. Expert not sworn - 2. First P. V. wanting - No suff. authority for calling
upon expert to work -

Ayr }
" }
Ryan }

Plff asks Just. on testimony adduced -

Rea }
" }
Vassal }

Action for breach of Covenant on hire of a vessel -

Stuart for Plff - moves that cause be tried by Sp. Jury
to Monday -

Nicol^e Marchand

M. Vigeur moved to join causes -

M^r. B^r. & Char^s
Mathieu

actions founded on same act - the only defence was to settle
balance, q^d. could not be known till bill of costs was taxed -

Ignace Robitaille }
" }
Same - }

Dube. }
M^r Tarwithald } Defend^t: made default - Plff moved for Jury -

Monday 7th October 1811. -

Witness day.

Renaud }
Hurteau } on mv. of Record - granted -

Tuesday 8th Oct. 1811. -

Lyman. }
Newton. } Plff moved to reject from Record a plea of Excep. in form. -
The Defend^t. was sued under the addition of Surgeon - he pleaded that he
was a Physician - not a Surgeon - this plea came in at the expiration of
three days - Plff moved to reject from the record the s^d plea, as well, because it
was made too late, as because it was futile & without foundation -

The Court after hearing the parties granted the motion, on acct. of the
plea coming in too late -

Renaud. }
Hurteau } action to set aside opposition to Plff's marriage. -
Hearing on Law
Viq^e for Def^t The Cur^e ought to be in the Cause - there is an
allegation de faux at. oppⁿ
Prof-ordered

Wednesday 9th Oct. 1811

Courville
Fisheau. } Judgt. ✓

St Pierre.
Garant } ordered that Defd. be exp. on oath -

Robitaille
Mathieu } Defend. mo. rejected -
and
Maurand }
Mathieu }

Cherupis
Taylor } Judgt.

Roulland
Pauzmann } Dismissed -

Adhemar.
Corrigall } on Defd. mo. to discharge Defd. from his bond, being an
action for damages - ~~mo. discharged~~ -
See 1. Todd. 12. 158. -

Sarquet.
Marmel } Judgt.
Garant }

Cause heard 11 Febr. -

Terrien
DeLongueuil

Defend^t exception over-ruled & pliff admitted to proof

Woyen
Farrar
Woyen opp^t

To see authority respects. Oppos^t being considered as Pliff
in a Cause -

Longueuil
Cheesman

for carrying away a fence from land leased to him
Sol. Gen. asks Jud^t for Dep^t on testimony adduced -

Gale for Dep^t. admits rent to be due. Value of fence only
point in question - Pliff's evidence defective & damages arent under
Jurisdiction of this Court - therefore Defend^t entitled to his costs -

Seaton
White

action for recovery of Wood detained by Dep^t -
Sol. G. asks Jud^t on testimony before Court

George for Dep^t. no mention made by Pliff in his Dec. when
he was possessed of the wood - The Com. Ros. not-dated -
None of wit. under that Com. establish a property in Pliff
It is b. that George Eaton agent of Pliff purchased them - but by
depos. of P. Eaton there is such a contradiction respecting the
pos. of Pliff as not to merit credit. - This wit. related to pliff
obj^t to testimony of Court. bailiff seizing as inadmissible the complaint
his P. Verbal of seizure -

Sol. G. in reply.

Mondelet
Morin
Gamlin Opp^t

on merits of oppos^t

Beaubien for Oppost^t claims £600 due to him by mortgage on house sold belonging to Def^t. It has been objected that Oppost^t has made acte d'heritier

Seveque for Oppost^t says that opp^t ought to have only £300 having made acte d'heritier of his mother - That instead of £600. the estate of Opp^t father ought to be computed at £800 he being in communauté with his wife at the time of his death entitled to half of it who has not renounced to that Community.

Fer. Gr. Com.
4. vol. art. 317.
p. 670. art. 9. 10

Pothier. Suc. ch. 3. Sec. 3
art. 1^o §. 1. & A. -

Obligⁿ N^o 647.

Dupleixii - Suc. l. v. A.
ch. 3.

Produces two receipts to show that Oppost^t has made acte d'heritier of his mother - as the money received thereby accrued to her under the deed of sale made by her of the house in question, the sum rec^d being the interest of 300^l - due on a deed which he states to belong to him - No proof of démence 1. Bourjon. - The act does not enquire folly - of it must be the case to be int. to some act. it - its arrest comprising testament olographe of a person sh^d. to be en démence.

tit. 6. p. 76.
art. 10. 11. 12.

Bedard in reply - Jdg^t. liquidating rights of Opp^t in Suc. of his father at £1600 - Receipts given by Opp^t were made during insanity of Oppost^t - That a person can come act. his own acts done en démence, but where his relations claim to set aside any act done by the party en démence without having been interdicted by them, they ought not to be received - a distinction to be taken where an interdiction is necessary & where it is not -

Bedard }
Lemai } Action for balance due on a land sold by Plff to Defd^t -
Bedard for Plff. only question is now respecting the Costs - which
he claims -
Beaubien for Defd^t - That there are mortgages on the land exceeding
the sum demanded - Plff cannot have debt nor costs without security. -

Blackwood }
Gal. } action petitoire. - over -
Labelle - }

Tappan & Sewell }
Kingman } On Defd^t mo. to discharge attachment of Defend^t's
property in the hands of the Garnishees, inas much as the
writ sued out does not enjoin such attachment - ...
Sewell for Plff. says that certain words are left out in the
writ by mistake - but the writ is in other respects sufficient.

Scombe }
Quintab } writt. till to morrow

Munsey }
Coyswell } on Plff rule on Defd. to shew Cause why certain parts
of plea filed by Defd. should not be rejected as being
irregular and too late & beside, not accompanied with 2 Guineas
Parker G. S. v. Vignaux in April. 11 ap.

Stearns for Defd. Plea is a general demurrer - person before whom
not passed not s^d. to be a notary - not clearly pointed out
where

where land is situated. - Not stated that Def^d. is? good and
quiet possession of the land sold -

Ross for Plff - all this matter is of a nature as ought to have
been pleaded within the 24 hours, it should have been pleaded by an
Exc^o. à la forme.

Adhemar.
Corriqab

On same rule obj^t. by Plff.

Stewart for Def^d - not stated what time the Plff was
discharged from the prosecution, it being in blank in the
declaration -

Ross for Plff. This exc^o. is à la forme, sought to have
come in within 24 hours after app^{ca}.

Prym
Leroux

On rule obj^t. by Plff on Def^d. why certain parts of
Defend^r. plea sh^d. not be rejected as being à la forme, &
too late, & also because Def^d. has pleaded to exhibits filed -

Papineau for Def^d - what he has pleaded is not à la forme -
contends that Plffs have not shown that they are heirs of
a certain person - q^t. is an exc^o. not merely to the form, but to
the right of action -

Bedard for Plff - The Def^d. does not give the reasons in his
plea why Plff. action is ill founded - That the objection latter to
the quality of the parties ought to be made in the 24 hours -

Mabbut
M^r Rousseau

On Report of Arbitrators -

Rolland for Plff. moves for report of the 2 Arbitrators
refers to Luit. in case of Donegany. v. Desnoyers - is afraid
last - showing that opinion of 2 arbitrators ought to prevail
over the opinion of a third, where they all act uprightly -

S. M. Vige' for Def^t - No credit appears to have been given
to the Defend^t of a sum of money p^d. to Plff. eq^d. by his act
is admitted - the report of 2 Arbit^r is defective in this - the
Report of Sollut the third arbitrator gives credit for this sum -

Masson & Hall
Mabbut

action on an award -

Stewart for Plff^s contends that reasons of objection pleaded by Defend^t
are ill founded -

Rolland for Defend^t - Award for £249. & value of certain timber
this value not proved -

1. There was no award given by the 2^d arbit^r - when Com. Rog. was
sued out by Plff^s they did not communicate names of the 2^d arbit^r -
upon q^d. the Def^t reserved his objection thereto - the names of Webb an -
Woolley & Symes, the two arbit^r & Voyer the Notary - moves that their
testimony be rejected on this act. as well because they are not
competent to prove facts asked of them -

The award not made in time - voyer is the only person who
can speak to the date of the award - not a competent witⁿ to prove this -
Ky. 262. it must be notified to the party that the award was made.
all arbitrators agree that Def^t need no notice that a third arbitrator was
named or that an award was made - etc. Loursu - Administration de
la Justice - that the notification to the parties only can ascertain the
date - etc. Benthitt. v. Munn - decided in the Court - 19 June last

Stuart in reply. Mercantile cause - authority from Jousse not applicable to say that an acte sous seing privé, can bear no date at all. -

No specific obj.ⁿ was made by Defend^t. that the names of writs were not communicated to him, only that he reserved his right of objection to the irregular signing out that writ - The Plff^t had no knowledge of any other writs - than the Ross the Tier Arbitrator & it does not now appear any thing to the contrary - the irregular mode ought to have been upon the Com. being opened to move that it should be rejected on this act. when Plff^t would have been admitted to justify the fact - the objection made at this late moment precludes the pass. of proof - & what the plff now avers must be received as true -

112
Proof is sufficient after execution of the award, by all the witnesses. - Ross cannot be admitted to contradict the award given by him - cite Peake Ex. p. 112 - Rip. v. Preuve, p. 579. The matter should have been pleaded specially that Ross signed the award without knowing its contents - Not necessary that Defend^t. should have been heard before the Tier Arbitrator - Kyd. 54 - The value of timber not necessary to be ascertained as Defend^t. may keep the timber & pay the money. -

Martin
Castongue

Racouris for Defend^t. says that there is a variance between Dec. & Summ^{er} on Thursday the 4th - That Defend^t. is styled a merchant - never was a merchant -

Bowker
in
Davis & al.
vs
Wm's Garnisher

Attacht. on a Judgt. on rule upon one Carpenter to shew
cause why note in hand given by Garnisher but made payable to Carpenter
sh^d. not be deliv^d up -

Boston for Carpenter, mis en Cause - not bound to answer to
Plff upon this kind of proceeding by rule of Court -

George for Plff. the mis en Cause is regularly before the Court
and having answered to the merits of Cause, he cannot object to the
regularity of the proceeding. -

Lacasse.
in
Busby vs
Exets.

On rule on Def^t. to shew Cause why the acc^t. filed by them
sh^d. not be taken off the record & Def^t. ordered to file a
sufficient acc^t. according to Ind^t. of this Court of -

Ross for Def^t. The acc^t. rendered is conformable to the
Intentions of this Court - & is the best acc^t. which Def^t. Woolman
can give. -

Sol. Genl. the

Thursday 10th Oct. 1811. -

Lacasse
or
Busby & al

The acc^t. deliv^d. back to the Ex^r. Woolman to assent about the
acc^t. as demanded, or say that he cannot give it as he
cannot ascertain what part of the property belonged to
the Community in question -

Mabbitt
or
Mousseau

The Report of the 2 Arbitrators confirmed -

Tappan & Swill
or
Kingsman

Motion to discharge attachment overruled - The writ
of attachment in part irregular but cured by subsequent
parts - Error in future in the writs of attachment
to be corrected -

Bowker

Davis, Gaffin
& al -
Willis, Garnish

The Rule for bringing in Carpenter discharged, the Court
being of opinion that he could not be made a party to the
suit by this summary proceeding - considering the said
Carpenter entitled to a plea to the demand made against him

Approved thereon. -

Martin
qui ram.
Castongue

Rule discharged. -

Adhemar
Corrigal }

The motion of Plff granted - & ordered that the exceptions
filed by Def^r. be withdrawn -

Mounsey
Cogswell }

Same suit -

Prym
Leroux }

Same suit -

Dube^r.
M^r Tavisk
Stansfield. }

Default Cause -

Plff moved for a trial by Jury -

Motion rejected -

Can be no trial by Jury without an Issue
joined - 1 Fr. par Paris. p. 7. -

Hennion
Proveridier }

The Plff being called did not appear -
Whereupon the Jury being called - and a Non-suit
entered against Plff -

Blackwood
Labelle }

action petitoire -

Beaubien for Def^r. That he acquired by deed from Cavillier
under which he obtained possession of the lot - That true it is
that prior to this deed, Cavillier had made a Cession of his property
to Plffs - but they never had pos. under that Cession, therefore the
title of Def^r. is preferable to that of Plffs - That the Cession
in question is not made according to Order of 1673, not having
been homologated -

Marchand
Mathieu }

action on deed of Exchange for bal^u of money

Lacroix for Plff - says that £92. 14 is due to Plff for q^t action is brought - Bal^u now due £33. 16. 2 after pay^t by Defd^t to an Robitaille on acc^t of Plff. - This sum has been tendered - only question now is for the Costs of Plff claims - Defend^t bound to pay Robitaille's debt & it was his business to have done so - that besides the sum of £33. 16. 2 tendered the Defend^t owes the interest thereon since March last - therefore entitled to the Costs -

L. M. Vige for Defd^t - The costs due to Robitaille were not ascertained - and the bal^u due to Plff could not be known till those costs were taxed - The Plff was the person who had the right and who was interested to have those costs taxed. The Costs taxed on 20 June last after the action was instituted. acknowledges that interest is due to Plff on the balance, & it was his fault not to have offered it -

Lacroix in reply - the tender ought to have been made in June last - the Defend^t have p^d about 11,000^{rs} to Robitaille q^t they were not bound to pay without receiving a copy of the Ind^t. and taxed bill of Costs - & the presumption there is that Defend^t had those papers in his possession -

Tetrodal
Couture
+ al -

action petitoire

Ross for Plff - The Defend^t called in Roberge one of Defend^t as their Garant, and he calls in Mr Delorme

the Saignie of Alaska as his Garant - he appears & supports
the title of Roberge - Question now between Plffs & arrere
garant -

L. M. Vige for 4 of Defs who are plffs in guarantee -
The title produced by Plffs is void - made by Mr Boileau as
Procureur of Mr Lennison in 1778, but was never signed either by
Boileau or Lennison. - The Plffs claim as minors, but from
exhib. N^o 9. it appears that more than 10 years have elapsed since
the Youngest of them was of age, during of time Defend^r have
possessed under good title -

Mr Papineau for Roberge - Obtained a concession in ~~1778~~
from Madame Delorme - a P. verbal of Survey was made in 1794
since of time Roberge has had possession - That the Plffs
never had poss. under their title which is in 1778 - nor was
^{att^y from} Lennison's ~~title~~ translatif de propriete - It is admitted by Plffs in
their Rep^s that they had not a possession under the title given to
their aubeun. Donat. C. Vente

Rolland for Delorme - Plffs do not alledge tradition under
their title - therefore cannot be admitted to prove possession as he
does not alledge it - The title set up by Plffs is for a lot of
land different from that now held by Defs^s the description
is very different - Concession refers to a P. V. in 1772 - & another
different one is produced -

Ross for Plffs states a title made by Mr Lennison's Att^y -
under which he is entitled to claim the land unless Defend^r can
show a better - plan filed by Defend^r show the old line which
occasioned a difficulty that deprived Plffs of his possession -

Rocher...
Cottineau (Oct. 1806)

When Court admitted
a P. Verbal of a Surveyor
not out other title & a
possession under it to
constitute a title to the
land, & to raise prescrip^t
thereon.

Therefore poss. of Defend^r was not in a quiet & peaceable poss.
of the land -

Sutherland
Cui. 27 }
Ducondu }
V^{rs} Ducondu }
Oppost -

On oppos. à fin de conserver -

Ross for oppos^t. claims principal of a rente & pension
on the land -

ch. 2. p. 455

Sol. G. Opp^t. has been dismissed in a former opposition
cannot claim by a second opposition - etc. Poth: Proc. Civile
p. 455. - Not entitled at all events to the money arising from
the sale of the land only the interest on it -

Ross in reply - opposant's right not precluded by any deed -
That the rent due to Oppost^t is worth more than the sum for wh^{ch} the
land was sold -

Friday 15th October 1811

Pontrel
Devoagne }
}

Receipt admitted to be proved -

Evalls
Clarke }
Foretier }
}

Opposition of Foretier dismissed -

Sutherland
Ducondu }
V^{rs} Ducondu }
Oppost

Ordered that experts ascertain the value of the rente -

Worthington
Barber

Plff. mo. for sup. facts & art. owing to a mistake committed by Plff in one of his Interrogatories - Rejected. -

Cameron
Baker

facts & art. served at a place where Defndt. had staid for 10 or 12 days - Plff moved that they should be taken as confessed by reason of Defndt's default, & being represented in the cause by an attorney - Held, that residence of a few days will not constitute a domicile - and as it does not appear that the service was made at the actual residence of the party, that it did not entitle Plff to have the facts & art. taken as confessed -

The Plff then moved for a Com. Rog. to ex. Defd. on facts & art. in Upper Canada - Quod est - acc. -

Jerry
Charrier

Barber

on verbal mo. by Plff for hearing on Excep. filed by Defd^t - Stewart for Defd^t - By setting down exception in this manner the truth of the facts therein stated is admitted - states, that Plff had not performed his part of the obligation

McLaughlan
McMillan

action for recovery of damages for non perf. of contract -
Order for Plff - Permission given by Defd^t to cut down wood in Township of Lachaba to Plff - ~~was not~~ when found wood cut down by Defd^t himself - Damages thereon accrued to Plff

Ross for Defd^t - Plff chose not to cut down wood on the Township because he did not find it of the quality he required. & abandoned the agreement -

Burton.

Derome
Cattin Inter's

Order for Plff. -

On Plff. mo. to execute a new Com. Roy. on the Commissⁿ
of the Inter's. party not having acted in the execution of
it. -

Stuart for Plff. - Objection new - party objecting to the execution
of his own Commission - when Def^t. objects to the execution, it will
be time to make the present application -

Spinard.

Dumontⁿ
Ferre^t opp^t.

On opposition of Ferre. -

Defender for Plff. moves that Opposition may be dismissed

The goods & effects claimed belonging to Def^t. having been
sold by Def^t. to Oppost. and by Oppost. leased to Defend^t.
after Judgt. rendered for Plff. in this Cause. & binder poss.
was never altered having always remained w^t. Def^t. -

Stuart for Opp^t. There is a constructive gross - or brevis
manus. which precludes necessity of actual tradition. -
No fraud alleged as the deed of Sale in this cause wh. only
can vitiate the transaction. -

Lagombe.

Quintin.

Action to obtain an account & Inventory of the Estate of
Community of late - Quintin -

The act. rendered, bearing thereon -

Late Quintin & wife made Don. mutual - Question - If late Quintin
was seized of Don. Mut. without making Inventory at the time
his wife died, & without giving Caution Juratoire - The
Plff. contend that Def^t. is not entitled to the Don. mut. nor
could make the fruits Sicus without such Inventory & Caution.

The obligation to make an Inventory cannot be given up -
Gr. Com. art. 285. 3 vol. 1652 No 24. The Def^t. bound to give
his Caution Juratou, q^d. cannot be received till Inventory be made -
Dec. Fer. v^e Caution Juratou - - Poth. Don. N^o 199.

The fruit not due but upon making inventory

2. Pigeau, Pro. Civ. au mot Successions. tit. 2. ch. 2. Sec. 2 §. 2. art. 1. N^o 1. 4. p. 379. & 384. -
De caution for Def^t. - The revenus not demanded from the decedent
of Def^t. wife - This ought to be granted only from decedent of
Grantal - The Don. Mut. saisit de plein droit - gives the fruit

Sec^o contra Demerit. v^e Donation par Contrat de Mar. §. 2. No 7. -
The art. 285, relat^e to Don Mut. made during mar. The present
Don. made by Mar. Contract - Poth. Donations. p. 2 ch. 5. art. 1. No
199. distinction marked - Rep. de Jurisp. - same authority -

Rep. de Jurisp v^e Don mutuel p. 156. §. 5 -
The Plff^t. never before demanded the Caution Jur., & never having put
Def^t. in demean, it is their own fault - Debat, raised upon
unless points - expense thereof ought to be p^d. by Plff^t -

on Not. 2.
ROSS for Plff. in reply - To benefit by Don Mut. an Inventory must be
made, otherwise the greatest injury might be made to the heirs by
the property being dissipated - refers to same art. Coult. 285 - unless
the party be specially exempted by the mar. Contract -
The debats de compte became necessary by Defend^t. not having
made the Inventory - Report of Choudelot ought to be preferred.

Allen.
Harris

On Def^t. mo. to quare writ of Cap. as Affidavit is not
made by Plff. or his Attorney - not taken before one of the Judges
of the Court - nor shown to the Judge signing the Declaration.
Stewart for Plff. - permission given to Def^t. to come in after 2^d.
default upon condition implied to plead issueably to cause & not
raise civil, respecting such points as the present -

That the present application being made three or 4 days after the Defend^t: appearance, comes too late. —

The person swearing states himself to be the attorney of the Plff on the affidavit, of^r: is sufficient — Affidavit taken before the Cb. Justice of Province — This according to the practice — The signature of Judge Owen not necessary being made on the declaration — the order of another Judge upon the affidavit being sufficient, therefore the order of Judge Owen wholly unnecessary —

Ross in reply. Yesterday only the security was given by Plff for cost, & the present motion made same day — The power of atty. filed in this Cause is given by Plff. to the advocate — & no power appears to have been given to the person making the affidavit. Both parties live in the States & therefore affidavit insufficient — The affidavit sworn to before Mr Just. Kerr insuff^t — as he has no jurisdiction in this district —

Saturday 12th October 1811.

Blackwood, } Deed of Assn to Plff
+ al. — }
Laballe, and }

Bédard }
Lemai — } Wdgt. on Plff. filing discharges of Mortgages

Spinaud }
Dumont } Opposition dismissed. —
Féré opp^t }

Hellocke }
" }
Dezury }
" }
Tarry }
" }
Barber }

Exceptions pleaded dismissed

Hamilton }
" }
Platt. u }

On affidavit to have a Com. Roy. to ex. Writ^e in England

Allen. u }
" }
Harris. }

The Defendants motion overruled

Care of affidavit taken in Holland was executed in England as . . .
suff^o ground for granting writ of Def^o -
See 8 East. T. Rep. 364. Omealy, v. Newell. -

Paquet sal }
" }
v. }
Viau }
" }
v. Paquet }

+ Papineau for Platt - action to render acct. of a Community. -
Defend^t. her late husband during mar. a Don mut. - - -
This is null - 1st Because it contains a general donation of all property
and 2. Because it is a Don. en prop. instead of usufruit.

Art. 282. Cout. text.
Art. 280 - d^e
3. G. Com. Fer. p. 1525. 1st
Vote de d^e L. -
Som. 3. 5. 6
3. G. Com. Fer. art. 280
Gloss 1. Som. 12
" 2. d^e 37. + 42
" 4. d^e 1st

Art 282. all advantages between Conjoints prohib^d except. by Don. Mut.
" art. 280 - Don. mut. restricted to honnables acquisitions during marriage
" Fer. above on 8^o article by Le Camus -
" N. Glos 1st Som. 2. -

2. Riccard Don. Mut. Fr. 1st
Ch. 5. Sec. 6. - & any
Som. 216. 217. + 219.
Pothier, Don. entre mari
& fem. part. 2. ch. 1st
§ 1st no. 135.
Id. Part. 2. ch. 2 §. 2
No. 167. -
Id. No. 122. 129. 168.

Riccard - Don. Mutuel - when parties have exceeded what is allowed
by don mut. it can be paid for what the law allows, or void for the
whole - it is settled to be void for the whole -
Pothier, establishes same principle -

See also
Demozart.
v. Don. Mutuel
§ 3. No. 5. -
Rep. de Tur. v. Don. Mutuel
part. 4. p. 152.

Sol. Gen. for Def^o - cites. Dec. Arrêts. Don. Mutuel. Redent.
also art. following - authority cited by Pothier is copied from
Riccard - same authority in Rep^o v. Don. Mutuel -
The Don. mut. may be reduced to what the law allows, without

See also
2. Boujou
Tit. 7. part. 2. ch. 1.
p. 251

Papineau in reply - authorities cited not suff.

Gillespie
or
Yeoward
Cur -
Stuart Garnisher

On Plff. mo. why Turs Jaisi should not deliver up
the original of a certain note of hand declared
by him to be in his possession. -

Stuart, the Garnisher, says, that the note in
question came into his hands in his official capacity from
a person not before this Court - The attachment of money
effects, this note cannot be considered either money or effects -
The note made for the use of certain minor children
whose rights cannot be prejudged, as they are not before
the Court -

Ross for Plff. The note within the meaning of the attachment -
The motion that the note be filed in Court - leaving to
parties to settle the rights of the parties thereon. -

Pettier
or
Mornaye

action en bornage. -

Rolland for Plff. The Plff by his title has an option
to fix the limits of his land between him & Defd. at 1/2 arp. beyond
a certain Coteau, or at 12 arp. from the river - Defense that
Plffs predecessor made his option & an arpenteur made
by one Gardet thereon - objects to proof of this fact as
insufficient -

2. If a line of Sep.
can be proved by
Plff to have been
established by a Survey
now deceased who has
left in P. 7. p. 10
question 2.

S. M. Vigé for Def^t refers to depositions of the two Loisys as sufficient evidence of the fact of the bonage of Gaudet upon option made by the pliff's father of the point of division between the lands of the parties - Rivet showed Gaudet's boundaries about 8 years ago to Turgeon, surveyor, who planted another boundary thereon -

Bunker
Stearns } on Pliff mo. for Just. on verdict, with full Costs -
mo. granted -

Robitaille }
Mathieu } Action of Debt on Deed of Sale between Def^t and
one marchand -

X Stewart for Pliff asks Just. upon his demand upon the evidence before the Court -

S. M. Vigé for Def^t That Def^t frequently called upon Pliff before action brought to get his bill of Costs taxed & that he was ready to pay in May last - Pliff ans^d he had nothing to do w^t it - Costs taxed on 22 June last - action then brought by Marchand q^d prevented him from acquiescing in the demand, as Marchand asked for same thing -

Stewart for Pliff. action by Marchand had nothing to do with pliff. demand, q^d is liquidated by deed between parties. the only question of the sum demanded be now due to Pliff.

Morse & Co
vs
Mears & Co

Action for £3000 stipulated damages on Contract -

Statement for Plff. Contract for delivery of lumber by Defend^r & on default, the damages agreed upon as certain fixed damages for their default was settled at £3000. Only substantial defense is, that Plffs have not suffered damage to extent of sum demanded - this not 'pleaded & the proof ought not to admitted - but if it were - this is not a penalty, to be considered as comminatory between the parties - it is an alternative obligation between the parties by q^d parties are bound - Polk. Ob. N^o 245. The only property shown to have been delivered by Defd^r in evidence may hereafter entitle them to a demand for the amount of it, but cannot come under consideration in this action. -

Order for Defd^r - Plffs have failed on their part, not having measured wood deliv^d to them as bound - Defend^r have performed their contract as far as possible - the timber of a certain kind, to be prepared only at Defd^r mills - This lumber was carried away by storm breaking down - Defd^r collected what they could & deliv^d it to Plffs - which they rec^d - The mark here been deliv^d accord^s to Contract - The damages excessive & only comminatory Polk. Ob. N^o 345. - The damages proved amount to £1200 being the money proved to be advanced by them - this they cannot recover as Defd^r have furnished wood to the

the

the amount of £1400. - This is not an obliq. altern. but a penalty.

Ross for Def^s. This Contract ~~is void~~ ^{is void} ~~is void~~, as Def^s could never under any failure on their part been liable to the penalty of £3000. - Parker Gerrard & Ogilvie have signed their partnership name and not as individuals - cite of T. Rep. Harrison v Jackson p. 207. - Partners cannot sign one for another, nor can one of the firm bind the partnership by deed - This deed therefore void - Auld & Stewart v Anderson. June 1810. on contract where damages were stipulated in same manner. Ind^t was refused for penalty - The obligation is not alternative, to give one of two things, but to pay damages on default of performing a single contract - Obl. 337. - on obliq. joint - lays down a diff. doctrine between it & obligation alternative - The wood of a particular kind, & a mill was built by Def^s in purpose to prepare it - mills ^{2^d am} were burnt & timber carried away - comes within case where act of God will excuse - No 350. - The Pl^{ff} have made no proof of damages - the Def^s show execution of their contract to the amount beyond the advances made by Pl^{ff} to Def^s -

Stewart in reply. Pl^{ff} may have an action for their damages, or they may have the penalty in the Contract in lieu thereof, the Pl^{ff} have chosen the latter - Def^s should have claimed by their plea a reduction of that penalty by the objects they have stated. There is no question respecting the form or validity of the Contract in question - Def^s have admitted validity of Contract, by saying that they have performed their part of it -

The Contract made here by a form as Attornies, not within case
cited from 8 T. Rep. —

There is nothing in the Plea, respecting the Mill of Defend^t
because of a peculiar construction or had been destroyed — Plff
therefore not prepared to rebut the testimony adduced — & even
in point of fact the Defend^t have not made out the matter —
Even in case of force majeure. the Debtor is bound to give notice thereof to his
Creditor. Polk. Obl. N. 148.

Court has no proof that by partial delivery of wood the plffs. damages
have in any manner been diminished —

Wednesday 15th Oct

~~Gillispie
Yeoward
Cul
Stuart Garnishu~~

Ordered that Garnishu should deposit the original note in the record -

~~Meloche
Dezury~~

Plea of Justification over-ruled. Parties admitted proof of trespass alleged -

~~Burton
Drome
Catlin Interz~~

Mo. for a new Com. Rog. granted -

~~John Stevenson
Jacob Guy~~

On trial by Special Jury -

action of assumpsit upon a bill of Exchange
Defend^t as acceptor of a bill of Exchs. drawn by one
Hamburk for £24. 3 in favour of Plff^t -

Boston for Plff^t - adduced proof of Def^t's signature by James
Stevens on, Plff^t's Son. -

Abner Rice also proved Def^t's signature -

No defence was made -

Verdict for sum demanded -

Venant St Germain

Arrièreux }

action for recovery of Interest due on a certain
real estate in the hands of Defend^t. —
Cause now heard since the Intitator for proof —
No proof having been made

Bédard for Def^t — That Plff^s not having proved that St
Germain an absentee ~~is now~~ ^{is now} alive, their action cannot
be supported — Poth. Cou. Cont. Vente — No. 257. — When right
of action depends upon a condition, that condition or event
ought to be proved —

Wegier for Plff. in ^{ans^r} ~~reply~~ The Defend^t ought to have made the
proof of the decease of St Germain, the condition of the party of
the rente being to be cont^d until his decease. Every absentee supposed
to live 100 y^r — ctes, Fer. v^o absent —

Bédard in reply — Plff^s demand is not made out without
proof of the existence of St Germain

Reaⁿ
Vassal }

on Plff^s motion for trial by Jury —

Stuart for Plff. action respecting the hiring of a vessel
by Plff a merchant — Lousse on ord^r of 1673 — refers
also art. 7. tit. 12. of same ord^r —

Bédard for Def^t — The affair must be entre marchand &
Marchand reputed such, by ord^r of 1785 — No question respects
the freight or manlay of vessel — This action brings in question
the obligations of the person hiring a vessel — ctes. Tit. 2
Code de la Marine, art. 2, this Jurisdiction given to the
Admiralty Courts —

No question here respecting the hire of the vessel, for which only the Juge Consul had cognizance.

Sol. Gen^e of Counsel for Defdt. The parties are not merchants - the transaction bears nothing of a mercantile nature in it - not cognizable by Juge Consul in France. The art. 2^o. of tit. 7 of Orde of 1673 regards only fret, not apprentement, ment^e in Orde of Lamarin of 1681. - It is not a contract concerns the Commerce de la Mer stated in reply - The only quest. is, if the matter be of a Com. nature and was so considered in France - was cognizable by Juge Consul - it being given to the Admiralty Court does not prove that it was not Commercial, but merely to shew that at the present day this case wd be properly within the Admiralty Jurisdiction -
Auld & McNeilland. v. Campbell -

Motion granted -

Dumont
Papineau }

action for damages for breach of Covenant.

Sol. Gen^e states action bro^t. on an act of apprenticeship between parties, by reason of the apprentice, the Defd^t's son, having left his service before expiration of the Indenture -

S. M. Wigge for Defdt. says he has sufficiently proved the defence set up by him - Objects to testimony adduced by Plff as not to be credited, being contradicted by testimony of witnesses of Defd^t. Action might have been brought before another tribunal to have the matter in contest determined at little expense -

Sol. G. Action for damages

The authorisation given to the wife to make such an acte de partage cannot affect the rights of the Interdit. claims that this act be set aside and a new act regularly made. —

Rolland for Plff. Poth. Pous. de mari. N. 25.26 The intervention of the Curator as to this act not necessary when authorised by the Judge. N. N. 13 — shows difference of authorisation by Judge & by husband as to the effects thereof rights on the Community thereby —

Falconberg }
M. Gillivrey } } action for wages due to Plff's son as servant to the
N. W. Co. —

Davidson for Plff. states that as heir of his son he is entitled to his claim & Costs thereon. —

Ross for Dfd^t says that as there were claims on the money by several persons, he could not pay it, but to the person having the legal claim thereto —

Berthelid }
Deshautels } } Action for money due to Plff. on an acte of partage
Lal } }
Lacroix for Dfd^t submits to the Just. of Court —

Raymond }
St Julien } } action on breach of Covenant & Damages —

Rolland for Plff. says, the matter in contest ought to be referred to Experts —

Defendant for Defd^r pleads agreement not made by both
Defend^r. but by one of them w^t. Plff^r

Colburn & Gile

Adams } Action on a promissory Note indorsed to Plff^r

Sol. Gen^r for Defd^r. The Note in Vermont - & the law
of place where contract is made must be received in the explanation
of it - By laws of that State that the Drawer of a note has a
right to plead any ~~off~~ set-off ag^t. the Indorsee of the Note as he
could have done ag^t the Payee. - Objects to evidence of Benson
~~drawn~~ as incompetent. - By Plff^r's own acknowledgment
to Baxter, it appears that the note was given as a collateral
Security -

Gale for Plff^r says there are two wit^s who say that Defd^r
offered to pay the note in question - Receipts in question given
3 years prior to negotiation of note to Plff^r - attorney may be exp^d
when it does not go to disclose the secrets committed to him by his
client -

4. Tenkys
Whison
Ruslot

Jerry.

Barber }

Action on deed of sale -

Stuart for Defd^r. Cause irregularly set down, as he ought to
have a day for proof. - The issue being an issue of fact
the Plff^r ought to have fixed a day for enquiry by Wit^s & by exp^d of
party upon facts last - plea nil dob. -

Order for Plff^r - no issue upon q^{ty} wit^s can be heard - he pleads in
fame of deed filed by Plff^r - citⁿ. can Dubois. v. Sawel. in April last

Lacroix.
Paris.
Paris.
Robitaille

On Report of Experts -

Boston for Paris. - the noise offered by Robitaille insufficient. -

Stuart for Robitaille, two objections to Report. 1st Experts were not sworn - 2^d. Interloc. Jud^t. contains no power to Experts to name a third in case of difference in opinion, which has been done here - 2 Experts named by the Court have differed in opinion & one of them with a third called in ~~double~~ given a P. V. of which the law. is .

Thursday 17th Oct. 1811

Gaspé
Brunel

action upon a promissory note made by Def^t. as Caution.

Rolland for Pl^{ff} says, that he has made the discussion required by the Jud^t. of this Court, having instituted an action ag^t the principal debtor, who denied the debt, and being ex^d. upon oath denied it, so that Pl^{ff} was obliged to discontinue the action - which ought to be equivalent to a discussion having done all she could to obtain pay^t of her debt

vicer for Def^t - The discont^s the action cannot be considered as a discussion - And the proceedings ment^d. by Pl^{ff} ag^t the principal, are stated to have been had two years prior to the present action - this is not in conformity to Interlocuta in this cause of 4 Oct. last, ordering discussion to be made -

Robin Lejeune
v
Parent

Action en bornage. —

Rolland for Plff. demands order for a survey & plan of the premises. —

J. M. Vigé. Plff. does not allege in his Decl^r. that he ever had tradition or possession of the land in question; on the contrary alleging that Defend^t. himself is in possⁿ — his title ought to be preferred to that of Plff. — *cf. cas Girard. v. Barret — & Culbert Gard. — That it is not enough to claim under a promise of Sale or Concession, as this gives no right to the thing given. Poth. Prop. n^o 245. —*
Rep. de Juris. n^o Tradition —

18 June. 1806

Prop. 245

That a Cont. Cou. was granted by Sup^r. to Defend^t. in 1798, in conseq^t. of q^t. a survey was made by Gaudet & Defend^t. — put in possⁿ — q^t. he has held ever since — that Sup^r. also had commⁿ. of the P. V. of Survey — all which gives a preferable title to that set up by Plff.

Rolland for Plff. states that he is prop^r. under a title prior to that set up by Defend^t. q^t. is sufficient to entitle him to claim that part of the land now in the possession of Defend^t. — *cf.* this as opinion of Court in case of Tetro. v. Couture dal. — in the present term — when it was s^d. that a deed of Concession without poss. was sufficient to entitle the party to claim the poss. from a third person. — Besides Plff. has a P. V. of Survey made in consequence of an action instituted against him by Signior of equal value as that set up by Defend^t. —

Halston
vs
Laing

Action on a promissary Note. —

Here for Plff, demands Judgt. on testimony adduced

Boston for Defd^t - Note given without consideration - on
an agreement for malt - malt deliv^d. of no value. —

Poutré
vs
Barré

Action hypothécaire. — for balance on sale of land

Quesnel for Defd^t - Defd^t is not in poss. of any land upon
which Plffs have a mortgage - and if he were, yet Plff has
no right of action against him, the Plff being satisfied for his demand
as in June 1810 the Plff obt^d. Judgt. at suit of one Berthiaume
for same debt now demanded - land of Berthiaume was
ordered to be sold in consequence of his dequerissement, but
the Plff. instead of selling land, accepted of it, and sold it
to another person, which ought to be considered as a satisfaction
of the debt - at all events Defend. cannot be prosecuted until
a legal discussion be had of the property of S^r. Berthiaume

Ross for Plff. - as to poss. of Defd^t. it is matter of proof. —
Plff. mortgage being indivisible, has a right upon every part of
the land upon wh. it originally attached - That the land of
Berthiaume was sold by one only of Plffs under a transaction
between Poutré & him, by wh. instead of selling land by Decree
he agreed to allow Berthiaume to keep the land - Plff however
reserved his right of mortgage upon the other parts of
the land in the possession of the Defd^t —

Martin. q. t.
v.
Cassouque'

action to recover penalty upon Usurious Contract -
Lacroix for Defd^t pleads prescription - Contract
upon q^t made in 1805 - all demands for penalties by
laws of England are prescribed in a year and day. -
2 Bl. Rep 792. action for penalty on us. cont. limited to a year
and three years have elapsed since the Contract ceased to have
effect. -

Ross for Plff. The ord^e of 1777 upon q^t action is founded
limits no time for bringing the action - The usurious
Contract is not complete until the money stipulated under it be
paid - Principles of Penal law of England not in force here. -

Vige' in reply. The principles of laws of a penal nature
must be regulated by principles of like laws in England, not
by laws of France, otherwise all the penal laws of France might
be considered in force. -

See Atcheson v. Swett
Cowper.

Hamilton
v.
Goodell

action for breach of Contract - & Damages thereon
Trial by Special Jury. -

Defend^t took objection to testimony of these, he being the agent
through whose medium the Contract in question was made. Objected
also, that ~~the person~~ ^{he was} not competent ⁱⁿ to prove the execution of the
Contract, as it appeared that there was another person present
at the time ^{of its being executed} who has subscribed his name as a witness, and
who alone is competent to prove the execution of the Contract -

Ans?

Ans^d. by Plffs - Wm a good wit^h? altho agent of the party - etc,
Cases Peake. Ch. 3. §. 3. (B). - as to the subscribing wit^h they
offered proof to shew that he could not be found at the time
when search was made for him to prove the execution of the Contract.

Upon this proof - the testimony of the wit^h was admitted -

But quere - Is not the agent signing the Contract for &
on behalf of his principal, as competent to prove the execution
of the Contract, as the subscribing witness? -

It is laid down as a general principle that when there is
a subscribing witness who is living, he alone is competent to
prove the execution, when he is in a situation to be examined,
because he may know and be able to explain facts attending the
transaction which are unknown to a stranger Peake. Ch. 2. §. 4.
But all this can be proved, or must be presumed ^{it can be} ~~to be~~
proved by the agent, who must know at least as much -
respecting the matter as any subscribing wit^h who may
be considered to be more a stranger to the transaction than
the person signing ^{on behalf of one of the} ~~as a~~ parties to the transaction -

Objected to the Contract - that it is the Contract of Plffs -
it being on the contrary the Contract of Wm, therefore Plffs
cannot avail themselves of it - The contract not signed
by Plffs nor by Wm as their agent - is therefore not obligatory
on them - is a mere solicitation Polh. Obl. 12
White vs Cuyler. 6 T. Rep. 176. Party acting as agent cannot sign his
own name to it, but must sign the name of the party for
whom he acts -

It appeared that the agreement that defend^t. had rec^d. on acc^t. of the 25th of July. he had thereby entered upon the execution of it & so far considered it as binding upon the parties, sought not now to take advantage of their defect of signature of Pluff^r, as they had performed what they would have been bound to do had they signed it.

Duncumell Donald - price of oak at Quebec in July was from 2/1 to 2/2 & was so from 13th July to 10th Sept^r - a very good lot might have been sold for 2/3^d.

Robert Hoyle. proves same value of oak wood at Quebec -

Deschambault

Ross. ^v et } action under Jud^t. of licitation, for costs thereof in consequence of Defendants purchase. —

Bedard - The part of late Mad^r. Duffy in the purchase money not ascertained by the Conditions of Sale, nor does it now appear by this action what that part was.

The Def^t. had no communication of the bill of Costs before taxed, nor was called to be present at the taxation.

Stuart in reply - By Jud^t. of June 1810, regulates the principle upon which the licitation was to be made by it, the part of M^r. Duffy was specified to be the half - No notice usually given upon such taxation - Def^t. ought to have paid it, and demanded a new taxation if not satisfied therewith. —

Roi
Piccard

action for amt. of 2. Obligations. -

Georgen for Defd^t - Obligⁿ not passed before the
Notaries ment^d. in Declaration. -

Upon this obrowⁿ - Plff^r discont^d his demand for one of Obligⁿ -

Forbes
Stearns

action for goods sold & deliv^d. -

Stewart for Defd^t - £5. only due. tender made. Val^y. 10 - value
rec^d. by Plff^r by some tobacco carted by Defd^t. from St Johns to
Montreal -

~~Poirrier
Proctor~~

action on deed of Sale. -

On Plff^r's motion to reject from record ~~that~~ certain pleas
à la forme d' declinatoire, being filed too late - objections
taken to the regularity of the service which should be made
by motion -

Ross for Defd^t - Exceptions filed in time, as had no notice of
the amendment allowed to be made by Court, & as soon after as he
knew such amendment was made he filed his exceptions -
Stewart - amendment was only of Sheriff's return of g^l he was not bound
to give any notice -

Ayers

On opposition for cattle seized -

~~Howell & Scagel
Krans op^t.~~

Ogden for Opp^t - proof that oxen were not seized
in the poss. of Defend^t - also, that property is Opposant's

Georgen for Plff^r - proof of property in Defd^t - also that
opposant claims under a sale from Defend^t.

Mc Vey.
Roussel

Action on Obligation -
Nothing said -

Hagar.
Lindsay.

Action for goods sold &c
Nothing said

Ormsby & Co
Allport

Action for work & labor -
Sol. Genl. for Defd. objects to sufficiency of proof

Cartier
Cheval
Grise. Opp^t
vs Deshautels
Opp^t

One mo. of P. Grise, that Deshautels should
be adjudged to reimburse to him a sum of 500^{fr}
which he paid to the heirs Cheval, in conformity
to Judg. of Distribution made in this Cause
20 April 1844. -

Lacroix for Deshautels, no proof before the Court
that Grise has paid to the heirs of Cheval the sum
of money demanded.

Park.
Crowther

Action for promissory Note -
Beaubien for Defd. Draft given for the amount on bill

~~King
Bingham~~

~~action for penalty on breach of Covenant~~

~~Brown
Crougher~~

Question of Costs.

Stuart for Plff. Defd^r pd. money after process issued.

Beaubien - Defd^r had delay to pay - was sued before expiration of it - at time agreed Defd^r tendered money to Plff, Clark, who took it - ought therefore not to pay costs.

~~King
Bingham~~

~~action for penalty on breach of Covenant~~

Ross for Defd^r pleads that Defd^r has paid to Plff the value of the land in question

Ogden for Plff, says. Plff is entitled to a Jud^t for money not obliged to take land -

~~Denaut
& up
Beffre~~

~~action en ded. d' hypothecque~~

Stuart for Defd^r defense, that he is not proprietor of the land in question, but one Turbington - who is not before Court.

Stanley }
v }
Poser } action for breach of Contract & damages thereon, on an
Indenture of apprenticeship -

Stewart for Plff. was demurred to Defend^t plea - Pleades
no notice of Apprentice having left Plffs service - not suff^t
2. By engaging in His Majesty's service, Def^t exonerated from
the demand - 3. Plea of not-guilty - to answer to demand
therefore asks for a day for proof of his damages. -

L. M. Wigé - Plff lives in another district - sought to have given
notice to Def^t of the app. having left his service - only notice was
by Drummons in this Court - Def^t cannot procure the discharge
of the apprentice from his enlistment, the only person who
could do so was the Plff his master, or the mother of the
apprentice

Friday 18th Oct. 1811

Alstone }
v }
Lang. } action dismissed. -

Wredon }
v }
Damour } Ind^y. that Defend^t acquiesced - considering the
quittance too general & not suff^t to toll the rights
of the parties -

Racine
v
Cotte } service made at 1/2 past twelve of the 2^d preceding day
considered insufficient - & thereupon action dismissed

Poirier
Coyler } Exception taken from the files -

Lamy
Barber } a day given to party for proof

Simon & Germain
Hirvieux } Left

Stanley
Pozer } The demurrer raised by Plff over-ruled

Martin
Castroque } on Plea of Prescription - Rejected as not-applicable
the St. of Eliz. respects. limitation of penal actions not
being in force - is not a Criminal Cause - so adjudged
Atcheson. v Everett. Cooper -

Stark
Odell } Obj. to sufficiency of Affidavit
Plff stated to be widow - not widow of whom
that affidavit speaks that Plff was informed orally before
that Defd. has not had 5 days service of Process

Lacroix
Deschamps } on Resp. mo. for dismissing oppositions for want of proceedings
for upwards of two terms -
St Julien &
Lobiniere } Objected that an understanding had taken place between
parties respecting money levied

Drake
Gourdeau }

Diff. Subject that he has not had 14 days notice
of motion -

Objected that cause was not to issue in term term
therefore not within the rule -

Young }
Blackwood }
Oppos^{ts} - }

Saturday 19th Oct.

Slark -
Edell }

order for proof of facts stated in the affidavit of
Plff

Dumont
Papineau }

Judgt. for damages for withdraws. Disfr. son from Plff's
service -

Seaton
White }

Dischambault
Ross - }

Judgt. - but not for costs of licitation, but they
had not been duly taxed. -

Bar: Longueuil
Cheseman }

Judgt 218 dam.

Marchand
Mathieu }

Judgt -

Robitaille }
Marchais. } Ludy-

Poutré }
Barre' }

The Court were of opinion that Plff has ob^d a Ludy^t wth Berthiaume & entered into a transaction wth him by which he gave up the land to Berthiaume, he was prevented from proceeding wth any other person by another action, until legal discussion should be had of the property first presented -

Pomeroy }
Globoensky }
peel - }

On question of interest -

Moudelit }
Marin }
Seminay offi' }

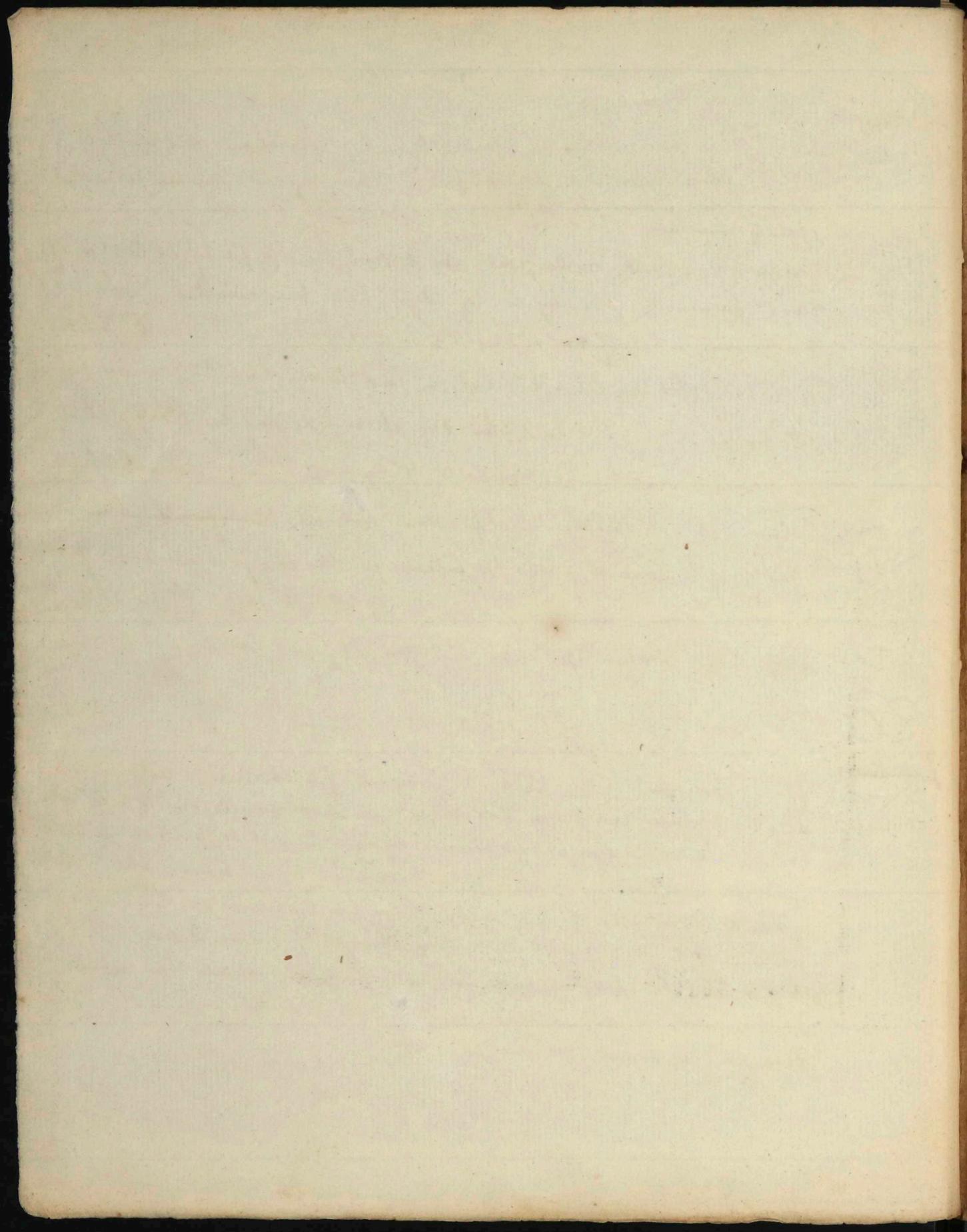
on mo. for pay^t. to App^rts^t upon giving security -
oppo^s money not due in case Moudelit should be evind -

Drake }
Gaudreau }

On case within the rule of practice, by allowing a variation to intervene -

Storrow
John Luke
&
Gouig. Garnishee

In the vacation the Garnishee presented a petition to the Judges, stating, that in Sept: last, the plff sued out a writ of seise or attachment in his hands in consequence of a Judgt. he had obt. against the Defend^t. That the Garnishee ~~not~~ ^{had} appeared at the return of the writ nor on the 4th ~~default~~ day after, a default was entered against him, and on the 14th a Judgt was given in favor of Plff for the amount of his demand against Garnishee. That at the time of the service of the process the d^r. Garnishee was absent from his domicile & usual place of residence at St. Armand, being at the time on his way to Quebec, from which place he did not return home until the 7th day of October last, when he first had a knowledge of the service of process - that being ^{a change in the Power} ignorant of the laws thereof he made enquiries respecting the nature of said process and was told that no Judgt. would be obtained against him as the service of the process had not been made to him personally - that upon further enquiry he was informed by a letter from an attorney in Montreal which he recd. on the 18th - that it was necessary he should go to Montreal immediately, that under a special application to the Court under the above circumstances, he might prevent Judgt. being entered up against him before he should be heard - but the said letter coming too late Judgt. was entered before he could reach Montreal - He therefore claimed the benefit of the law, in respect of ^{the} process not being served personally on him, that he should be admitted to take off the default entered against him on pay^t. of such costs as sh^d. have arisen upon such default, & be thereupon admitted to make his declaration as a Garnishee in the form - Arts. - Pigeon. Proc. Civ. p. 397 - Com. de Louve on Code Civile art. 5. tit. 14 G. Tit. 35. art. 3. - The Garnishee made affidavit of the above facts & ~~states~~ that he had nothing in his hands belonging to the Defend^t.



100

100 5

1000 50

2000 100

£2500:

