Kings Bench Montreal.

Civil Pleas.—

February Term 1812. 2.5 / 1.2.6 / 3

April Term —— "

June Term "

1.11.6
2.10
4.1.6

February Term 1812.—

Saturday 1st Febry. 1812.—

All the Judges present.—

Dumas v Geneveay & Burton

Sur. Mr. Clement Pattinson 8 ap. 1811.

The Sol. Genl. objected to the sufficiency of the service of the process as being left at the last domicile of the Defendt. contending that such service is insufficient. and that the process ought to be quashed.

Stuart for Plff— The service of the process sufficient under the Code Civil as redegié & in force in this province as part of the old laws of the Country.—

Daly v Walton

Plff moved to ex. D. on faits art.— having reserved that right on the day for the ex. of wit. last vacation —

Ross for Defdt. Plff did not demand any day for ex. of Defdt to be fixed, & therefore cannot be granted —

Stuart contended for Plff. that the day cannot be fixed in vacation for bringing up a party to be ex. in vacation, as the Judges have not the power to make such an order obligatory on the party in vacation.—

Mowatt v. Swan — Pltff moved to be permitted to strike out a certain indorsement upon a bill of ex. upon wh the action is brought — Objected — that the record cannot be so altered —

Monday 3. Febry. 1812

Park v. Crowther — Judt. —

Brown — v. Crowther — Judt —

Mondelet v. Morin & Gamelin — Judt. dismissing the Opposition. —

Miller & Bowie v. Mears et al — Interlocutor for proof of damages —

Colburn & Gill v. Adams. — Judt. dissentd. —

Dumas v. Burton — Motion rejected —

Daly. ñ Walton } Pltff. mo. granted – the rule as to fixing day for facts & ant. not applicable but to sittings in Term –

Wilson & al ñ Peaslee & al } ~~Defendt. moved to ex. Wat. in term –~~ Pltff ~~Defd.~~ objected. Cause brought to issue this term & therefore Cause must be cont. to vacation

King ñ Talon } Defendt. moved that the writ of Summ in this Cause should be quashed as being in the Fr. language – St. of 1801. repeals ordn of 1785. – Cont.

Burton ñ Phelps. – & Idle & Co Intervs. – } The Pltff moved that Intervention shd be dismissed as party had filed no power of Attr warrants same – Reg. Pra. p. 33. sec. 5. –

Stuart – no rule requiring such power on Interventions or Oppositions as these cases often become necessary when powers cannot be had –

Storrs ñ Jeremie & al } action for an assault –

On Pltffs mo. to amend declaration on payt of Costs. –

Rolland – objects, that decln is in blank as to date of assault material & not amendable – Dfd. has pleaded à la forme on this act & no answer has been put in thereto – Pltff now too late – Excep: therefore stands admitted & the action must be dismissed. –

Dunlop
v.
Cuvillier

action on promissory Notes —

Stuart for Defdt — Plff by Dow his agent & Attorney was a party to an assignment made by Defd. to his Creditors, by this assignment it was agreed that certain parts of his real property should not be sold till after five years this was equivalent to a letter of licence for that period Plff now brings his action for his debt stated in that assignmt. in contravention to this above agreement — Plff as trustee vested with all property of Defdt under that action & not accountable to Defdt —

Ross for Plff. Deed of assgnt. dated on 14 Oct. 1806 — This action instituted subsequent to the five years nearly writ of Summ dated 30 Sept. last — The letter of licence was granted only for three years — these are expired — action founded —

Stuart — The Plff by consenting to take real property of Defendt after expiration of five years — must be considered to give a delay till that time & that no suit can be brought by him in the mean time by wt he might take other property of Defdt —

—

Dow
v.
Nelson & al Exrs

action for dam. for breach of Contract, on an Indenture of apprenticeship of Plff. son to Defendents. —

Stuart for Defdts alleges that they have fulfilled their agreemt towards Plff son until he run away from their service — Plff demand for goods not proved as to the value of them —

Tuesday 4th Febry. 1812.

King
v.
Bingham

Judgt. for damages on bond.

Dunlop
v.
Cuvillier

Excep. to rejt of action dismissed – saving fact to Jury –

Lee
v.
Senter
&
Dole. Opp.

~~Oppn. dismissed for want of security for costs~~
Mo. for ~~delay~~ for Security for costs rejected.–

Burton
v.
Phelps
Idle & Co.
Intervs

A day given for producing power of attys.

Wilson val
Peasley val

Mo. for enquete during this term rejected, as the issue was completed last term – applicable to Defts as well as Pltff

Reese.
v.
Marchand

Deft. moved that action shd. be dismissed as Pltff has not given security for cost as ordered on 1st inst.

King.
v.
Talon.

The Defendr motion rejected –

Delanger
v.
Desforges

on Defts mo. to quash writ as served at a place where Deft. had no domicile –

Pltff

Pltff contends that mo. shd. have been made on day of return of writ, wh. was on 1st. inst. —

Defdt. could waive no right if he made default & this being the first day of his appearance he is by law entitled to make every exception in the Cause —

The Court were divided in opinion on the rule — mo. rejected —

Lacroix — Hearing on report of Experts —
Papin — Paris —
Paris — Pltff prays Judgt. on his action agt. Defendt —
Robitaille — Bolton for Paris — prays Judgt on report agt Dft Robitaille —

Stuart for Robitaille Expts sworn before a Justice after Peace — irregular — 48. G. ch. 22.

Lafleur
Masson — Action de Separation —

Masson
Dion — On report of Arbtrs —
Defdt. concludes that costs shd be divided —

Wolfe & al
vs
Hilton — On award —

Wilson et al. vs Sumner } Action de revendication. —

Defdt. says, that Plffs have not shewn their right to the Copper in question — it belongs to Peaslee & Haswell who had it for building a vessel — Defdt. came to the possession thereof as the property of Peaslee & Haswell —

Stuart for Plff. The copper was in the pos. of Peaslee & Haswell as the Servants of the Plffs —

On Petition of André Guy. — } On Petition to take off an interdiction wch had been made upon his own request. —

Wednesday 5th Febry. 1812

Lafleur vs Masson } Judgt. Lfs

Dow vs Nelson & McCord } order that articles in the act.

Make vs Quion } Judgt

Woolfe vs Hilton } Judgt

Wilson dal' vn Sumner — } Instt —

Campbell vn Mathieu } action for defamation —
Defdt moved that another action instituted by Defdt agt the Pltff for the same cause should be united & heard before the same jury —

Stuart for pltff — actions different — no law for joining such actions — see Tidd. 532 — not actions of a nature to be joined

Grant & vr Taylor — } on pltffs mo. for hearing instanter — as the Defdt has joined matters à la forme with a plea to the merits, to wh Pltff has ans: instead of moving to reject from record s: matters à la forme Defendt objects, that Pltff having raised an issue wt him he must give notice & have the case regularly set down for hears. on a day to be fixed, but cannot obtain a hears instanter —

Boudillier vn Demers & Duquet — } On Pltffs mo. to reject a plea conts exceps. à la forme filed too late by Defdt —

Stuart for Defdt. The matters pleaded cannot be considered à la forme of the Declaration, but to the fond of the demand —

Chenet vn Cerat } On the Defdt moved to quash Pltffs writ of Summons & Declr because Pltff does not reside in the parish wh he states himself, nor is he a voyageur, as stated, but a farmer — Pltff ans: This can be no cause for quashing pltffs writ, particularly as the Contract between the parties mentions the residence & quality of Pltff as stated in the Declr —

Marié
Dame — } On Defend. mo. to quash writ of Saisi Gagerie —

King
Dupéré } On mo. for Certiorari.

1 B.C.R.
King v. Revell
231 —

Vassal
Cuvillier
Dunlop pl. } On rule upon Sheriff of the district of Quebec to shew cause why he shd. not be held to return the monies levied by him under an ext on sued out from this Court —

Rolland for Sheriff. says, that he never levied any monies under the said writ — that the monies were paid to him to be paid over to the Plff in full of his demand & costs done — no seizure was ever made.

your

Ross for Dunlop — Sheriff could not part with the money without order of the Court —

Beaujeu
Chatel &
autres — } On action for reunion — several tenants, lands mentd. in same requête — 2no. if the action can be maintained in this manner —

Bedard for Plff. This Court has same powers as Intendant who proceeded in this manner — all Defendrs have been brought before the Court by the King writ. —

Thursday 6th Febv. 1812

Boutillier
vs
Demers & Duquet

The Court were of opinion that the Exception was an error of the right of action & not à la forme & therefore dismissed the motion. —

Chenet
&
Cerat

Defdr. mo. dismissed. —

Vassal
Cuvillier & al
&
Dunlop —

An order to communicate the Opposants motion to the pltffs. to be heard thereon —

Campbell
vs
Mathurin
and
Mathurin
vs
Campbell

The court were of opinion that as the words spoken are alleged to have been spoken at different times in the two actions, they could not be consolidated —

Tuttle
vs
Berry —

Defendt. obts. a surcis
contd. to monday. —

Grant
vs
Taylor

On hearing on Defdr. exception. —
Stuart for Defdr — several causes of demand; & only includes for one sum —
Exception dismissed costs all. at £2. 6. 8 —

Lotbinière
v
Forbes

On Defend^s mo. to reject testimony of several witnesses adduced on the part of the pltff as irregularly adduced —

Stuart for Defdt — action for a delit said to have been committed by the Defend^t by cutting certain quantities of wood in the rivere à la graise, which injured the Defendants mill upon that mill The obj^n to testy of the wit^s that they were parties concerned in the delit in question — the Pltff gave a release after the testimony had been given was too late. —

As to the incompetency of the wit^s they being parties crim^l. —
Peake Ev. 165. 4 T. Re. 589. rule general. Peake Ev. 171 upon the Peake case.

Release too late — the intention being to take off the impression from the mind of the wit^s the release ought to be given before he is sworn Peake 154. —

The objection to one Laurengen is because he has a mill on the same stream. —

1 Bornier. p. 212. notes
1 Pigeau. p. 282. 2^nd
Poth. Obl. N^o 795
Rep. de Jur. vol. 17. p. 63.

Sol. Gen^l Obj^n stated is no reproche to the wit^s Pigeau. It is no interest that a similar action may be brot. agt. the wit^s if he has not an action actually pending. Gilbert Ev. 139, a part. Crim^l — a competent wit^s his credit only is affected — Peake — on what is competent wit^s on head of Interest — 146. 152. Poth. Ob. N^o 795. —

Ross for pltff. Temoins necessaires admissible in this case, as such they are competent. Case Day & Gliston v. Lampman. where carter was admitted a wit^s upon receiving a release, although person who committed the injury. —

Stuart in reply. Interest of wit^s is evident, and without a release could not be heard —

The Court were of opinion that the testimony was admissible there being no direct interest in the witness

Papineau for Pltff opened Case —

The Pltff in poss. of a river for 40 years — not navigable — & thereon the property of the Pltff — Ordre des Eaux & Forets — points out what a navigable river — Riv. non nav. belongs to the Seigr — Bacq. ch. 30. Sect. 25. Lacombe. Denisart — Vo Riviere. Repertoire de Jur. Vo Fleuve — States acts done by Defdts which occasioned the damage to the pltffs mill-dam — That if River were navigable Defts still punishable — The Defdts imprudent by not using means to navigate the wood cut by them in such manner as to avoid injury. — they left it to chance & by pressing on accumulated heap on the dam — destroyed it —

A. Fremainville, p. 425. — 486

Stuart for Defts no such thing as a Seigr River — regards only the jurisdiction of Seigrs had as haut justicier of the rivers — but never had a property in the river — Pltffs right not founded upon his being Seigr Haut Justicier, & was necessary to give the right — The only proof of Defdts have cut the wood in question arises from the testimony of Grant & others whose testimony has been admitted by the Court this day — Grant the only witness who forms the connexion between them & the persons who cut the wood in question — the paper writing opened to by Grant under oath he acted has not been produced nor accounted for —

The act charged to be illegal or imprudent — The River in question is a navigable river, carrying batteaux, the intermediate interruptions by falls or otherwise do not stop the navigation — but is a publick Stream, upon wh Defts had a right to do what the law did not prohibit —

As to the imprudent conduct of the Defendts it is without foundation — directions given by Defts to Grant to cut wood of a length to pass through the pltffs dam —

The act of Defendt never did produce the injury complained of —
The Pltff lately made a new dam different from the former & causing a greater obstruction in the river, by raising the new dam higher on each side, so as to leave a race way in the middle for the passage of all bodies floating down the river — By the rising of the waters certain large masts & spars (cut by persons in Up-Canada when the river passes) were floated down & lay across this new dam which obstructed the passage & stopped the other wood floats down

Sol. Genl in reply — Not necessary that Pltff shd be haut Justicier to entitle him to the river when not navigable —
Grout not the only witn — No 4. & No 5 confirm his testimony to this that Defendt were the persons authorising the act — No 9. 10. 11 The Defendt pd monies to Witn & were present when it was carried on. One witn sufficient, when other facts corroborate what he has said. —
As to the paper given by Defts to Grout — Pltff cannot produce it, they had no knowledge of it — till mentd by the Witn —
The act of the Defendt was imprudent in cutting wood in such quantity as to produce the damage in question — he ought to have removed such obstacles to the free passage of it such as the masts in question —
Says that damages are made out to extent of £300. — contends that exemplary damages are due —

Ormsby v Allport } On action for work & labor —
Georges for Pltff repair to testimony. —

Worthington v Barber } action on promissory note — Plea — prescript — Defdt answers on facts & art. that all note pd but £5 — Defdt does admit making note, but all his confession must be taken
Pltff says that Defdt cannot set up a part in his own favor upon the facts & art —

Friday 7th Febry. 1812

Leclaire exp
vs
Desgranges

The writ of Summ in this Cause was served an hour and an half short of the time required by the rules of practice - Defendt. thereupon moved that action be dismissed. —

Saturday 8th Febry. 1812

Blackwood
vs
Bouely —

Pltff moved to reject pea. Excep. à la forme filed by Defts — as being too late —

Stuart for Defts. contends that the Excep. is not à la forme, but peremptoire en droit. —

Marié
vs
Dame —

On Pltffs mo. to fix cause ex parte — Defts not have filed a plea —

Vezé for Defts. says, he has pleaded to the regularity of Saisie

Bedard for Pltff - this is only an incident in the Cause & does not regard the merits —

Wurtele
vs
Bouely

on Pltffs. mo. to reject excep. à la forme filed by Defts

Stuart for Defts. says, the excep. is peremptr en droit —

Blackwood et al
v
McLaren —

On Pltff — mo. for trial by Jury —
Defr. objects. that the action is founded on a bond given to the Sheriff respecting certain Slaves owned by him and is not a case triable by Jury —

Cardinal
v
Dénaire

On mo. to reject Exceps. à la forme as too late

On claim of
Wm. Beale

On quest — whether a medical man can be heard on oath as to the amount of his claim for medicines furnished by him —

Monday 10th. Febry. 1812

Rule for fiat to issue writs of Summons —

Blackwood
et al
v
Bondy —

mo. for dismissing the exception ~~dismissed~~ granted. Costs 20/—

Prudole
v
~~Bondy~~

same Judgt.

Cardinal
v
Bondy

Same Judgt.

Marié
v
Dame

Mo. rejected — there cannot be two setts of pleadings in the cause —

Declaire dux
~
Desgranges } action dismissed –

~

Blackwood et
al
~
McLaren. } Motion dismissed. –

~

Adhemar
~
Carriqué } On Pltff's mo. for trial on 17th –
Deft. objects that he obt. a Com. Rog. in vac. ret. on
1st Oct. next. –

McKenzie & Co
~
Seguin – } On Pltff's mo. to set down cause for ex. of Wit. –
Deft. says he has demurred to Resp. of Pltff as not answers
suffly his plea & that a hearing thereon ought be first had –
Parties heard instanter on this demurrer – Ct. were of opinion
that such a pleads. was irregularly filed & not conformable to the
practice of this Court –

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Marié
~
Dame – } One Defend. excep. to regularity of Saisie Gag. served
out by Pltff

Vijé for Deft. art. 161. does not grant Saisie gagerie for farms
only a droit de suite, when the fermiers are executés. –
Lacombe. vo Saisie G. Denisart. id. Duplessis on l'art. 161
de la Cout. Fer. vo Gagerie. & 2 Gr. Cout. p. 999. No 23 –
Poth. Louag. No 276. 270.

Jones
~
Finchley (1756 –

Bedard for Pltff. – art. 171 gives same prov. to prop. of Farms as art 161 gives to pr. of houses for rent – Polth. Louage Nr. 228 gives a prov. on fruits of land for payt. of rent. – also Nr. 257. – Allen Pltff. allegs that Defdt. carried away the produce to another farm –

Drigé. The droit de suite given only in case when farmers are saisis and when the property is removed – but not right of Seizure by way of Gagerie.

Tuttle v Berry

On defendt. pet. for rehearing on cause, &c

Rolland for Pltff – Defdt in laches, did not apply for a rehearing until the day prior to sale of his land – although he knew long before that Jugt. was given – & by his prayer he may be permitted to prove – That an opp. to sale of real Estate must be made 15 days before sale & Defendt cannot be in a better situation than a stranger –

Georgeon for Defdt – Defendt has a year and a day to come in for a re-hearing – Expon Mezully sued out – Pltff ought to have given security under ordr of 1785 before suing out Expon – this was not done – The saisie was therefore regularly granted –

Rolland – ordr of 1785 does not apply, but to absentees in a certain part of the country –

Ferguson v Laporte

On Pltff – mov. to reject plea, in default of conclusions being altered – Ct. ordered a new plea to be filed –

Barlow
vs
Dunlop

Action of revendication —

Defendt put in Exceptn that it does not appear that Deft. but that Pltff withholds the property in question —

Stuart for Pltff — The error is in a copy of Declr in naming Pltff instead of Deft as withholding property — Defendt must plead to the Original — if Copy was not correct Deft ought to have brought the variance before the Court in a different manner by not having rect a true copy of Declr —

Smith
vs
Heu

On Judt of Court of Appeals ordering proceedings to be remitted to the Inferior Court —

Bedard for Defendt that the Judt of App was given in 1803 and therefore is peri — & this court cannot proceed thereon — Poth. Pro. Civ. 84 —

That the Instance is not perie until it has been so declared by Judt of the Court — refers to Pigeau — & Pothier — Judt in appeal orders something to be done, & is not subject to peremption —

1 Pigeau 355. 6

Jugement d' Instruction 88. Poth. proc. Civ —

Tuesday 11th Febry 1812

Adhemar & Corrigal } Plffs. motion rejected —

Marié & Dame } Saisie Gagerie, annulled as illegal

M'Kenzie & Sequin } Defdt. no. granted. —

Barlow & Dunlop. } Exceps. dismissed without Costs — a new copy of Decln to be served —

Tuttle & Berry } Interlocr for proof on the petition. —

Denaud & Beffre } On Opposition of Beffre — afin d'annuller —

Beffre oppt

By the plea of Defdt — he offers to give up land — Judt gave the option to deliver up Judt. or pay debt —

Judt conditional — there can be no Exon on such Judt — no limitation. Court have a right to rescind the Judt as interlocutory — Dismiss the appointment of a Curator to the biens dequerpi. —

Ch. 2. cat. 3

Biens defendeurs not bound personally to the debt —

Lacroix for Plff. the Defdt was en demeure by service of the Judt — Defendt bound to make an act de dequerpissement at the Office — Delaizart vs Dequerpissement — The Defendt now too late to dequerpir —

Stuart — The Judt cannot become executory by any act done in vacation the party must obtain an order from the Court. —

Labruere
vs
Masse

Action on a promissory note —

Bedard for Defdt. note taken as consideration for a concession of land made by pltff as Seignior. — proof by Defndt — that the ditches & fences on land are of no value. — The Pltff on oath admits that Defendt — gave the note in consideration of the improvements — it wd be a means to elude the law, if by cutting down a few trees or other immaterial thing on the land the Seignior could demand an exhorbitant sum of money under the name of improvements. —

Beaubien. Pltff admits by his answers that the note was given in consideration of the improvements on the land, & not of the Concession — the fact appears that there were improvements on the land at the time, their value cannot be material to the question before the Court —

¼ d'arpent de cloture et une decharge — La cloture valoit 20 Sols — Le Dndr avoit une autre terre et les temoins en general disent qu'il a travaillé à cette decharge à cause seulement de cette autre terre.

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Martin. q.t
vs
Castonguay

Action for penalty on an usurious transaction

Ross for pltff contends that he has made proof of demand 2 Doug. 697. — 736 — 4 T.R. 353 — Mars. v Melvin — 4 E.T.R. 55. — Barclay. vs Walmsley — 4 Bur. 2251. Abraham v. Bunn — to shew with competent —

Lacroix for Deftt — by Ordr of 1777. Pltff cannot obtain the penalty he demands — no proof of any thing having been rec'd to constitute usury — the three rents he rec'd having been by the Judgt of the Court compensated with Demand of Defndt agt Labrup vs whom the transaction was made —

Ayer vs Joy

Action agt Defendt as security for rent & other objects for one Babcock —

Ross for Defdt. The action agt Babcock ought to have joined the Defendt but having made his election he cannot have the present action agt Defendt — The Defendt was not a caution for Babcock but jointly bound with him, if there was any contract whatever There is no evidence that Babcock signed the paper nor of the Defendt — only proof of signature of the witnesses to the paper but no proof of signature of Joy or Babcock — That the contest between the parties has been left to Arbitrators who took cognizance of the same — Court ought to order a new Arbitration, if they see that the Pltff be entitled to any action agt Defendt —

Sol. Genl the Defendt was the caution for Babcock therefore Defendt ought not to have been joined — The absence of witn to the bond is proved — Defendt cannot be allowed to benefit by any thing done by Arbitrators — there appears to have been no reference to them, nor has the Defendt pleaded any thing to entitle to what might have been done by the arbitrators —

Woolman vs Talbot —

On rule Nisi why Defendt shd not alter the conclusions of his plea and conclude to the Court —

Exhib. wants,

Ross for Pltff, the goods ~~sold~~ were for the greatest part sold at Sale after death of Winklefoos — partly by Winklefoos himself during his life time — Defendt has pleaded non-assumpsit to the whole and cannot have the benefit of a trial by Jury for a part of the issue, and as the whole cannot be tried by the Jury, the Defdt ought to be bound to conclude to the Court —

Stuart for Defdt. The Pltff cannot deprive Defendt of his right to a trial by Jury by joining different demands in his declaration some of which are triable by Jury & some not. —

Dessaules

Wednesday 12th Febr. 1812.—

Belanger vs Desforges — on Pltff. mon. for ex. of Writ ex parte.
Defr. objects that he has had no legal notice of any amendment ordered by the Court in the declaration—

Pltff— Notice that the amendment required had been made— but did not serve an amended copy of the declaration

The Court rejects mon— being of opinion that another copy of Decln. shd. be served

Dumas vs Burton — Action on Obligation—

Sol. Genl— action in quality of widow— there is no proof of mar— Bor. tit. 20. art. 8. the extract filed is no legal extract, signed by a person calling himself a Minister— a parish register kept by a Curé or vicar of the parish. the extract therefrom must be signed by the person have legal custody of the Regr— There is no parish of Quebec, but the Catholic parish— no Protestant congregation legally authorised to keep registers—

Stuart for Pltff. the Religion of Sovereign introduced by the Conquest— the person having the custody of the Register is sufficient—

Haskel vs Sherwood — Action on a Judgt. of this Court—

Stuart for Defr. On all actions instituted on Judgts— the party ought to shew that the party had been regularly called

puts Court, the Exemplification of the record must state the whole proceedings —

Ogden for Pltff — The Defts ought to shew if the proceedings were irregular —

Duvillon
vs
Duvillon

action on an Obligation, payable at decease of Obligor now brought agt his Legatee —

Papineau for Defts

1 The act in question is not an Obligation — It is not for a debt, but a liberality by late Duvillon to Pltff — It is a donation not insinuated — nor accepted by Pltff — It is giving a greater proportion of a Succession to one of the Children — It is not vested with legal form to make it a testament — If it were there appears a testament in legal form of a subsequent date which leaves to pltff 25ths for all claims in his Succession — The act is not Obligatory without acceptation — Poth. Obl. Nos 13. 4. — Power of revocation — etc. argue —

For. Vo Obligation Obligation must be causée — Pars. Not. Ct. 7. acceptation is necessary.

Lacroix — for Pltff — act is a reconnoissance of a debt. qch requires neither mutual acceptance nor insinuation —

Dunlop
vs
Cuvillier & Co

action on two promissory notes — Trial by Sp. Jury.

Pltff proved 2 notes —

Defts took objection to notes stated in Decln & proved; in the Decln notes not stated "to order" — notes proved, state them to be payable to order — prays non suit — objection over-ruled —

David Davies - says he is one of the trustees named under ~~Rod. McKenzie~~ the deed of assignment - that the real property of the Defend^ts has not yet been sold - That he has yet monies in his hands being the dividends of the Creditors who had not become parties to the Cession - but that Pltff has rec^d the dividends he was entitled to as a party to that act - ~~That the real property of Defend^ts has not yet been sold~~ That Defend^ts have never rendered any acc^t of the monies recovered by them to the Trustees -

Rod. McKenzie. was clk to Defd^ts at time of their bankruptcy and since, and has a knowledge that monies recovered at different times by the Defend^ts from their debtors were paid by them to the trustees. -

1004. 18 9

The Defend^ts stated in defence -

1. By deed of assignment of Defend^ts to their Creditors, their Creditors are vested with all their property - and the Pltff as one of them Creditors cannot be allowed to institute any action while in possession of that property and until discussion thereof -

2. That it is a principle in law that until this discussion shall be had the bankrupt cannot be harassed by Law Suits had it even not been so stipulated - cites. Rejs. Decisions -

3. That the Interest was to ease amicable debts of the Creditors parties to the said assignment - which cannot be allowed to Pltff

The Ct charges the Jury - That although the deed of Assignment gave to the Creditors a legal title ~~in the Defend^ts property to the Creditors~~, yet it appeared that the Defend^ts had always remained in the possession of that property & had been charged with the right of recovering their outstanding debts, and that in fact the Creditors had never

beyond what it had pleased the Defendt. to allow to the Trustees.

beyond the Bonds they rec.d

never been in the possession of any part of the property so assigned — ~~That~~ the objection now made by the Defendt. could avail him only in so far as it had been shewn that the Pltff as one of the Creditors of the Defendants was in possession of property belonging to them — in this they had failed, nor did it appear what the nature of the property assigned was nor that any part thereof ever came to the hands of the Creditors — ~~beyond the Dividends which had been paid to the Pltff out of the Estate of the Defendt~~ appeared to have been credited on the notes, and nothing more was in proof — That there was one point upon which the Defendts appeared to be better grounded, viz.t was the Interest — as it was stipulated in the deed of assignment that the Interest should cease upon the debts due to the Creditors who were parties thereto — and this stipulation being unconditional the Court were of opinion the Pltff was not entitled to the benefit thereof, but that Pltff ought to have a verdict for the rest of his demand —

The Defendts counsel claimed a right to hand to the Jury for their perusal upon withdrawing from the bar the deed of Cession he had filed as authentic evidence in the Cause — this was resisted by the Court — but upon the Pltffs counsel agreeing thereto, it was permitted to be given to the Jury. — Verdict for Pltff £1004.18.9 — with Cost but without Interest —

* beyond their respective dividend

What the Pltff had rec.d

Thursday 13th Febv. 1812.

Demeunebaux
Beffre
&
Beffre appt.

Interlocr ordering Defdt. to make his option in 3 days whether he will abandon the land - appt. of time declaring him personally bound for the debt & costs due to Pltff.

Schmidt
vs
Fenwal

Pltff. mo. granted - the Court being of opinion that the peremption even if due could not be granted without a demand for that purpose - that the Judt. in the Court of Appeals was in some points final in as much as it adjudged the Defdt. to pay Costs, & in other respects ordering something to be done was not liable to peremption - see. ca.

Dr. Rex
vs
Caldwell dal

Certiorari granted - under circumstances of case & statute in the affidavits filed on behalf of Dupré the appellant -

Friday 14th Febv. 1812.

Witness - Day.

Saturday 15th Febry. 1812.

Burton v. Menard & Bristow. — Mo. for Serment decisoire. — Objected by Pltff. that he resides out of the County — Has rec'd no notice of this motion. to Dft's att'y. has no power to make motion. —

Munro v. Porteous — On Pltff's mo. to reject exp. à la forme by Defd't — Ross. for defd. the pleading is peremptoire en droit. — Beaubien for Pltff — Defd't obt's delay to plead till 10th & cannot be admitted to plead otherwise than he could have pleaded on the 3d. day after appearance. —

Campbell v. Mathurin & Mathurin v. Campbell — Defd't — On action for defamation Damages £1000. trial by Special Jury. — The parties agreed to join the two Causes —

Defd't. objected to testimony of Provo — Cause not entered then in Court nor was read, which the Ordre of 1785 requires —

Stuart for Pltff — It has been determined that a Witness about to leave the province may be exd. at any time —

The testimony admitted —

Defend't. objects to testimony of Godet as it relates to fact q't happened above a year before the time laid in the declaration —

Stuart — Defd't ought to have pleaded the plea of prescription —

Testimony rejected —

Stephen Collins — exd. on Com. Rogr — Pltff objected to cross-ex as being a proof of facts in compensation, not stated in the plea — On this act. the Court rejected the testimony, but reserved to the party to adduce it on his case — of Campbell —

Isaac Shew. About end of July last, on some difficulty respecting the marking wood — Defd't s'd to Pltff he was a liar & a rogue — has heard him at different times impute dishonesty to him in his office —

x[D]

The letters on wood were S. A. as belonging to Saml. Adams —

Alexr. Auldjo — Timber merchant in Montreal — Knows Pluff — has employed him in his Office & always been satisfied with him as an honest intelligent man —

x[D]

Has employed Defts. when he could not get Pluff — any thing that Defts. might have said of Pluff wd have no wt —

Wm. Stallworthy — Knows P. for several years always found him act fairly & honestly in his profession — Any st. to asperse his character might be injurious to him wt persons who were not acquainted with him —

x

That any thing Defts. might have said to the character of Pluff cd not have injured him in the opinion of the world although it might have done so in the opinion of Strangers —

Chr. A. Turner — Same Evidence —

Jasper Tough — Same Evidence

Defence.

Pre. Falon — In May last Pluff was in habit of going to work house — does not recollect to have seen Defts. & Pluff together, but his House on 2d may last they may have been there without his Knowledge — Was present at conversation between them mentd. by Defts — does not recollect particulars —

Robt. Wilson — was present at conversation respecting piece of wood marked S. A. Pluff st. that it was not marked by his order — remembers that Pluff st to D. that he was a poor creature & wd beg before the fall — That D. st. Pluff was a liar as his father was before him — Pluff take your rod & go seem busy on that raft as you generally do to have an appearance of business — Knows Defts. has employed him

and never heard any complaints of him. —

Pltf Talon sits Defdt went sometimes to house of Wm Talon last spring — has seen Pltf there with him several times — did not attend particularly to their conv. that took place between — & no K. of what conv. took pl. as to Pltf but he was spoken off —

Is often from home on his business. ——

Ore action Matharin v Campbell

Jos. Chapman In May last was present at a house formerly occupied by one Winn when Pltf & Defdt met there — several persons were present — among whom some lumber Merchts from the Up. Provs. — Pltf asked of one McDonnel his money for wood he had inspected — there was some difficulty about the payt of it — McD. sd his bills wd not pass & that D had told him so — Matk. sd it was a Damn'd lie — D. sd he would prove that his bills wd not pass & had been rejected by several merchants in town — that he saw Defdt hand lifted but did not see him strike P. but saw P.'s nose bleed — Defdt. obsd that P. did not know Elm from Oak thereby imputing ignorance in his business — considers such lang. injurious to Pltf in prejce of sd McDonnell who refused to pay his bill.

X

That some conversation passed in the room where parties were before he went in — Pltf's bill was the subject of dispute — did not hear McD. say that he wd not pay the bill because Defdt had told him it wd not pass — did not understand that Defdt sd that Pltf bill wd not pass — this he did not consider as applicable to House of P. Q. L.C.; but to trade in Montreal in general —

Timothy Healey. was present in May last at a tavern kept formerly by Wm when P. & Dt. with several others — Pliff came in wt a bill asked for one McDonald — went into room when Mr D. was dividend bill — Dft was then in room adjoining — Mr D. sd his bills were not receivable he was so ignorant that he could not distinguish between clean & oak — P. sd if D. sd so he was a damn'd liar — Pliff then went into the room — & asked why he called him liar — P. sd if he asserted such things he was a damned liar — upon wh D. gave P. a slap in the face — & sd if he called him liar again he wd serve him so — heard D. say. that he was no Inspector of wood. that he did not know elm from oak — That after P. was gone D. sd that P's bill would not be received by any merchts — considered this as injurious to Pliffs character — as a Caller of wood —

X.

D. was reading a Gazette till he heard the word liar, when he went into the room — seemed much irritated by being called a liar —

Lt. Provendier. a Taverntkeeper in Montreal — Some person named Slasher came to his house & wanted to know if he could recommend him to any person to buy his wood — told him that P. purchd wood for Mr Dunlop & he wd perhaps buy it — It seems that D. got information of what was told Slasser — next day D. came & asked him what he had done to introduce P. to Mr Slasser — to buy his wood — sd he was at liberty & therefore he did it — D. seemed angry that Pr had given P. this preference — before of time D. was in habit of sending people to his tavern —

Michel Many Is engaged in the lumber business & engaged P. to measure his timber last Summer, found him careful & honest — heard D. say, that P. ~~was~~ not able to make ~~out~~ a bill — thinks means to say for want of education — several persons present — who are now absent from the province — thinks it was P. by D. to injure P —

Pluff moved that the ~~cross~~ ex^n of Stephen Collins sh^d be admitted objected, that the Cross-ex^n in

Jas. Dunlop. knows P — has been in the habit of employing P. as a Cullen for about 20 months always found him correct in all his bills — could employ him in any other business from his apparent correctness —

Defence —

Wm. Yeoward — one of P^s. in house of P. G & C. dealers in timber — about May last they bargained w^t one Mc Donnell for timber & thinks they mentⁿ to him that Campbell was then Cullen & begged that he might be employed in culling it —

Monday. 17th. Febvy. 1812

Davis. Allison & Contra

On Defdts mo. for a Com. Rog. to ex. a witss in England — Objected that the affidavit is insufficient for grounding application —

Quenville v Chantrand

Action to render acct —

Bedard for Defdt — Pltff does not ascertain by what title he claims as heir of late Quenville — Pltff is named Jean Quenville in Debt: the ext. bap. is named Jean Marie Quenville —

2d. The deceased in 1795. made her will & appointed her husband the Defdt. her legatee — she died in 1810 — subsequent to St. of 1801 — By Roman law the incapacity existed as well at time of making the will as at the time of the decease, as the institution d'heritier had effect — but by the Laws of France the case is different. 3 Lw. 2. tit. 22. 3 vol. Fra. Institt. — the incapacity here was only in the legataire. and the Prov. Stat — took away that incapacity — Bacq. Droit d'aubaine — Ch. 27. in fine — Poth. Intr. Cout Orl. p. 492. Domat. Lw. 1. tit. 2. — the incapacity being removed the will was good — That Pltff cannot alone prosecute this action even if founded, as the other coheirs ought to have joined with him — Poth. Com. 697.

Lacroix for Pltff — contends that he has made proof of his capacity as heir — That by 282 the wife could not make a will to her husband — cites case. Lacaze v Wendlefoos — Lilly & Burton v Racine — where case has been determined by the Court — That Pltff alone has a right to bring his action — even if there were other heirs — but no proof of their existence —

Bedard — The art. 282 only ascertains the incapacity of the legatee to receive, but not in the testator to give — as it is certain that the wife has that power during coverture — The Pltff admits sufficiently that there are other heirs —

Thomas — Piccards — & Archambault

On the opposition of Archambault —

L. M. Vigé for the Opposant claims that the land seized by Pltff be sold subject to a certain charge — made by Oppt. in consequence of his having become caution that one Mathieu shd. not be troubled for a certain rente & pension for wh. the land is bound & thereby become debtor of that rente — although not same land now expired for said yet Oppt having his mortgage on that land is entitled to his Opposn —

Rolland for Pltff — Pltff pros. sale of a land belongg. to her late husband that no person can make an Op. who has not an interest in the charge to be imposed on the land — The charge here contended for is in favor of a third person — The right of Oppt is at most a droit non exist, a droit de garantie under his cautionnement — there can be no action until there be a trouble under such garantie — 4 Cout. tit. 16. art 3 Henrion p. 156 — That Oppt is not subrogated in the right of Mathieu Domat — he has a recourse under his hypothèque, but no right to impose the charge — the Pltff Marion could not herself claim right to such a charge — the Pltff is prior in right & the charge subsequent thereto —

Vigé in reply — The caution has the same rights as the person for whom he is caution — refers to authorities — This is the only opportunity the Opposant can have to save himself when the property of Debtor is about to be sold — although not the same land, yet the right of Oppt is the same — as to the priority of right it cannot avoid the oppt — as she signed the Act of Sale to Mathieu — although Pltff was not a party to the cautionnement yet being made in her favor the oppt is founded in his demand — The Opposn is the only means of security for Oppt — & that Pltff shd. give a counter security to Oppt —

Hanna
vs
Jackson

Sarault. Cur
vs
England

Action on deed of sale —

Beaubien for Defdt — The appointment of Pfff as Curator is null, having been obtained under false statement — Menebrez was Tutor to Minors Courcambe - renounced thereto & the father of Pfff was named tutor to s.d Minors — That the procuration given by Menetrier & his wife to late Sarault did not regard the property of the Minors — Whereas it was stated that under that procuration, the late Sarault & his wife became bound for the administration of the property of s.d Minors — That the appointment of Curator did not have to the Minors Courcambe was made — demand of Pfff as acting on behalf of those Minors already dismissed on a former action —

Bedard for Pfff — The Defend. cannot set aside the appointment of the Pfff under his plea - the legal means are by application for a new appointment of a Curator — The property of late Sarault & his wife as his legatee was bound for the administration which late Sarault held — Therefore interested in the appointment of a Curator to the Minors —

Sarault. Cur
vs
Gravel. —

Same question —

Dunlop
v.
Cuvillier

On mo. for a new trial. —

Stuart for Defdt —

1. Variance between notes proved & those stated in the declaration fatal. 1. Esp. N.P. p. 140. proof must correspond w. what is lld in Declan Com. Dig. 374. 5. — Doug. Britton v. Wright — as diff. on contract — expects quarterly payments — Wentworths Sybt. pleads. — Brueas anderson v. Arnoldi — demurr founded on want of words, "value rec^d." Judt — 20 June 1808. action dismissed —

Sed Dampart / vs assignation / Mr. J. 8. 13 —

Com. Dig. Trouse sur Mod. 1667 Tit. 2. ad. 6. (n. 1) —

1. Esp. p. 139 Phyl. on bills p. 106. No. 10

2. The Cession made to Creditors of Defds became vested with the property & no action could be brought until that property had been disposed of v. abandonnement de biens — Rep. de Jur. — also v. Cession — The Trustees & Defendts were the mere Clerks of the Creditors, who were the legal holders of the property —

Ross for Pltff. proof of note stated in the declaration to support the action — there was no question as to the negotiability of the note before the Jury — the words "or order", could never come in question cases cited not ap — as now stated in the decl^n in the cases cited there appeared in the Contract proved — case here diff^t — The Defends by their plea in bar admit the notes —

2. The facts in the plea in bar submitted to the Jury — not proved

Stuart in reply — Case same where more is stated in Decln than proved by Contract, as well as when less is stated there appears on the Contract The Pltff might have another action on same note ag Defdt — The deed of Cession shews that Pltff & Creditors rec^d £18,000 to pay £14,000 & therefore Pltff was bound to shew what had become of it —

Noel
vs
Marmier
&
E Contra

action for debt on a deed of Sale —

Lacroix for Defdt pleads nil deb — Reconv. demand for having sold a right of mitoyennete in the pignon of the house in question & the allonge, which by the Judgt of this Court has been adjudged not to have been the right of pltff —

Davidson for pltffs the Reconv. demand is for damages and cannot be admitted as principal demand after is liquidated and certain. —

Daly
vs
Walton

Action petitoire —

Stuart for Pltff — only question respecting rents & profits of premises, the title to the property being admitted — on the faits & articles, Defdt admits have rec'd the rents & profits, but says that she pd the amount thereof in repairs to the house in question no title to more repairs — Nothing to inhibit Defdt to obtain such repairs —

Ross for Defdt admits the property in the pltff — but contends that he can have no judgt for any sum of money for the rents and profits, as it appears by answers of the Defdt on faits & articles, that she employed all that she rec'd in repairs to the house — the answers must be taken in toto & not separately —

Stuart — Defdt cannot set up a new demand by the faits & art to avoid pltffs right — but proof must be made thereon —

Judgt in Curia

Laurent
Sanguinet

Action for debt on Obligation —

Ross for Defdt — The oblig: is for money lent — the defendt answers, upon the facts & articles, that he never lent money to the Defendt — & therefore action must fail —

Charbonneau
Charbonneau

action on oblign —

Bedard for Defr — defendt — ex. on fait & art. & it is now to be settled whether the monies in the hands of Lacroix be the property of Charbonneau Plt or one Chaunet —

Roi. —
v.
Piccard
&
Piccard oppt.

On opposition of Josette Piccard. —

Beaubien admits the offre saying he found the moveables in the poss. of Defendt & was therefore warranted in seizing them — he admits right of Opposant, but says that Defr ought to pay costs —

Lick. Vige — offers —

Cardinal
v.
Bondy —

Defdt — was admitted to ex. P. on fait & art.

Burton.
vs
Brisbin

mo. for Serment decisoire rejected — order for pleadings to renew —

Archambault & Martel

action on amend —

Bédard for Defdt — contends that the amount upon qh the amend is founded ought to be before the Court to enable it to form its judgment on the pltffs demand —

Rolland. for Pltff — the papers is in the hands of the Defendt —

Munro & Forbes

Pltffs mo granted for rejecting peremptory exceptions —

Marmier & Bautron

action for 18 cords of wood —

Rolland for Defdt — Defdt says that Pltff is bound to give Defendt his lots qh he has never done — besides there are lods & ventes due on the lots prior to the Defendt purchase

Lacroix for Pltff — Defdt is in poss. for several years past & never complained of any want of possession —

Tuesday 18th Febry. 1812.

Chaliffoux
~
Marotte
~
Bédard

Mannier
~
Major

Interlocr ordering plff to file deeds in cause —

Denaut
~
Bissonnet
~
Bissonnet opt.

Defendt having made an act of delaissement — the saisie of Defendrs goods was taken off Costs divided —

Daly
~
Walton

Judt — —

Roi —
~
Piccard
~
Piccard opt.

Opptn admitted —

Saraudet
~
Chapman

Commn ordered to be given to Sol. Genl on behalf of Crown —

and

Saraudet
~
Gravel

Same order —

Keese
~
Marchand

On defendr mo. for security for Costs —

Wurdele. —
vs
Boundy. —

St. for Defdt. moved to ex. Plff on faits & articles —
rejected by the Court — Objected to the sufficiency
of the order on Defdt. to appear & be exd. on faits & art. —

Carreau et al'
vs
Renaud

Action on deed of repartition for building a church —

Davidson for Defdt. — objects to allowance claimed

Bellows et al' —
vs
Henshaw —
&
Spalding opp.t

On Opposition

Bernier for oppt. claims that Plff cannot sell Defdt. effects
without security for the lease not yet expired, as well
as for the arrears due thereon —

Rolland for Plff — there can be no security for the period
of the lease yet to expire — as it would be a fraudulent means
to secure the property of Debtors — particularly in this case where
there are three years of the lease yet to expire, only about nine
months expired —

Foucher —
vs
Lalouette

action on Defdt's acknowledgt —

Rollans for Defdt — says the act in question is not authentique
the notaries before whom it was passed acted in their capacity of notaries —
the Plff was no party to the act, & cannot take advantage of it —
Obl. N.t. — There was neither value nor consideration for the act —

Bedard for Pltff — The act is suffᵗ as an acte authentique — That no acceptation was necessary, not being an act of Donation — The act for damages &c. is a sufficient consideration —

M'Kenzie & al
vs
Deschambault

action on transport from heirs of Dufy

Stuart for Deftˢ has pleaded nil deb — The Indᵗ filed not alone a proof of the debt without the declaration — this was irregularly brought up by the proths with the record, & a copy filed by this means — this paper was essential for the support of the action ought to have been filed instead of being brought up in this way — Moves now to reject the above copy of the Declⁿ so filed — The part of the Indᵗ of 19 Oct. 1809 upon wᶜʰ the assignment is founded has been reversed by a Indᵗ — in appeals of — Janʸ. 1811 — & party cannot under that asspt claim what has been allowed by a diffᵗ Indᵗ of another Court —

Rolland for Deftᵉ — The action not founded on the Declⁿ — & not in his power
& therefore Pltff not bound to file it — The assignment is for all the right of the party in the Succession of Mad Dufy, as stated in Indᵗ of 19 Oct 1809 — although a modification of this Indᵗ has been made, yet the thing meant to be transferred is the same —

Cardinal
vs
Bourdy

action for rent — — &c

Stark
vs
Odell

On Defendr mo. to quash writ of Capias —

Georgen for Defdt — The Pltffs affidavit states that she doth verily believe that Defdt is immediately about to leave the province the Ordr requires a positive affidavit — The evidence adduced in support of the affidavit is insufficient — only one witness speaks to it the proof on the part of the Defendt is strong to shew that the process is irregular —

Gale for Pltff refers to proof made —

Larrivée
vs
Masson
&
Stansfield
Oppt —

Georgen for Ezra Brown — objects to the collocation of Stansfield & Myers Michaels —

Webster —
vs
Proctor et al

On Defdt — mo: to quash writ of Summs from irregular service —

Gale for Defdt — Proctor contends that service was not made at any Domicile of Proctor — nor at what could be considered as the last domicile of the Defendt —

See Denizt vs assignation Sec. 7. no 13 — Jousse Ordre 1667 Tit. 2. art. 6. (n. 1)

Stuart for Pltff action on a bill of Exc. accepted by Defdt before the institution of the action the partnership was dissolved & therefore separate service became necessary — this service made at the Counting house where they carried on their trade —

Gale — when there is a contest respecting domicil the Plff must make out proof of the fact to support his demand — Louis Com. —

Pangman vs Duprat — On report of Experts. —

Lacroix for Defdr — states, that the Exp. have not complied with the rule in not ascertaining the State of the mill at the time of bringing the action —

Rex — vs Corneiller & Grandchamps — On motion for a Certiorari upon a conviction before the magistrate. —

Ross for Magistrate — the proceedings not regular — not shewing any affidavit to found his application —

Wednesday 19th Febry. 1812 —

Quintin vs Quintin — Judt. confirming the report of the Practicians. —

LT

Reese vs Marchand — action dismissed — for want of security for Costs. —

LT

Woolman vs Talon — Judt — on motion —

LT

Lacasse &c.
Bisley Exr
& Woolman Exr. — On Pltff's motion to reject the account filed by the Defendant Woolman as insufficient —

Stuart for Pltff. The acct does not comply with the Judt of the Court — The Defdt ought never to have rendered any account as an Exr can never be supposed to be able to render such an account —

Thursday 20th February 1812.

Rule of practice respecting returns of writs —

Nocls & Marmet — Judt dismissing Incidental demand as already adjudged on —

Starke & Odell — Action dismissed — —

Dumas &c. & Burton — a further day for proof —

Bellows dal Henshaw & Spalding oppost. — On opposition — ordered that effets ought be sold —

Queillon & Queillon — Action dismissed —

Lacasse.
vs
Busby
&
Woolman

Order for hearing before procédiens to establish the state of the Community —

Webster
vs
Proctor &c

Excep. dismissed —

D. Rex
vs
Corneiller
& Grandchamp

Rejected

Cyer
vs
Loy —

Judt —

Martin —
vs
Carouge

Judt —

St. Pierre
vs
Garant

Action dismissed —

Js. Dunlop
vs
Cuvelier & Co

Mo. for a new trial. dismissed —

Murchison
vs
M Donnel

delay given to Deft. to answer first day of next Term to Plffs motion —

Foucher
&
Lalouette

Causes under Consideration.

De Beaujeu v. Chatel fils and Truchon dit Levalle — Action for re-union of Defendrs lands to the Domaine of the Pltff. Seigniory —

Quere — If different persons holding under different deeds of Concession can be summoned by the same Writ & Declr — and as to form of Certificate of Curé, & Capn of Militia, if sufficient evidence —

Pangman v. Duprat — On report of Experts, respecting sufficiency of Pltff. mill.

Delabruere v. Massé — Upon promissory note made by Defdt to Pltff as Indsr —

Blackwood & al. v. Labelle. — On Defendr. Excep. to sufficiency of the deed of assignmt —

Quenerville. v. Chartrand — On question respecting validity of a Testament made by Defendr late husband —

Thouin v. Piccard & Archambault Oppt — On opposition afin de charge of Nic. Archambault —

De Lotbiniere
vs
Forbes —

Damages for breaking down Pltffs dam —

Contraband goods

On Libel agt. East India Goods imported by the way of the United States into this Province — See. St. 7 Geo. I. Ch. 21. Sec. 9. —

April Term. 1812.

Wednesday 1st April. 1812.

Burton
vs
Derome
&
Cattin Intervs

Intervs. party mov^{d} for a Com. Rog. to ex. Pltff on faits & art. —

Objected, that by rules of prac. the Com. sh^{d} have been moved for 4 days after issue joined — and now too late as Issue was joined some months ago. —

Stuart for Int^{rs} party — this does not regard ex. of a party on faits & art. —

McKenzie & al
vs
Beaubien —

Stuart for Def^{ts}. mov^{d} for ex. of Pltff. on faits & art.

Ross for Pltff. Def^{ts} has already had a day for this purpose & has not done diligence on it. —

Stuart for Def^{ts}. the progress of Cause not delayed, as he asked for rule sooner than he was bound —

Granted —

Blais
vs
Mercean & al

On mo. to ex. Writ^{s} —

Def^{ts}. says, that this is the 3^{d} time of Pltff^{s} application to ex. Writ^{s} — & according to rules of prac. he sh^{d} pay the costs of the Suit, before the mo. be granted. —

Scott
vs
Decarry

On report of Experts.

Ross for Plff moves for hom. of report of the two Experts.

Bedard for Defdt. The Exp. have not complied with the rule of reference — the 3d Exp. never went on the spot, never heard the witss and was never sworn ~~to give it~~

The Plff controverts the fact, that this Exp. did hear Witss on the spot — and contends that it was not necessary that this Exp. shd be sworn. —

Prior
vs
Hilton
&
Busby opt
& Sheppard

On motion by Opport. to discharge the seizure made at suit of the Plff for want of proceedings during two terms

Williams
vs
Stewart

On Plff mo. for leave to proceed, as Defdt had not filed a plea

Bellair
vs
Perrault

On Defdr mo. to quash writ, as no day of return is mentioned in the Copy —

Thursday 2d. April 1812

Prior —
Hilton . —
Busby & Sheppard offts } Main-levée on Exon granted, by consent of Pltff atts —

Blais . —
Mercier val } Pltff mo. granted, in consequence of entry made at ex. of Dfts in vacation. —

Scott
Decarry } The report set aside, & tien Exp. ordered to be dismissed —

Buston
Menard } Action de complainte —
Parties submit the Case on the evidence adduced —

Molloy
Motte } Action for dam. for breach of Covenant, for not having sawed certain parcels of wood as agreed —
Sol. Genl for Pltff. the penalty stipd. is £50 — and considers damages made out to that extent —
Bowen for Dfts — Pltff has made no proof of damages —

Johnson
Lukin } Action for Cens et rentes as Seig. of Argenteuil —
Georgen for Pltff — Demand ascertained upon deeds — Defts plead Inscd demand for work & labor as a notary — the objection now before the Court whether such Inscd demand can be received.

Cole
v
Church

Gale for Defr. mov. for security for costs as Pltff has left the province since the Com. of the action & files an affidavit to this effect —

Georgen for Pltff. Affidavit not precise as to the fact — Defr. too late in his demand, as he ought to have demanded security within 4 days after his appe —

Impey.
v
Baker

Stuart. mov. for pubn of Com. Rogre —

objects that name of Cause not mentd on Cover — not dated & Proths — nor sd that it is a Com. Rog.

Bladget
v
Hawley

No return appd to have made — mo. rejected —

Langan
v
Carpentier

On Defrs mo. to quash process, as Defr. is named Charpentier and not Carpentier, as stated in the writ —

Bender for Pltff — The difference is immaterial & he ought to be allowed to amend —

Court granted leave to amend on payt of 2/- Costs —

Williams
v
Stewart

The mo. to proceed ex parte rejected as unnecessary —

Bellair
v
Renaud

Stuart for Defr — moved to quash process, as copy of writ contd no day of return —

Lange v. Tremblay — Def^r mo. to quash writ as have been served upon a holy day — vendredi Saint. —

Stevens Petitcan & al. 1811

M. Vigé for Pltff — contends that rules of practice do not — compute the service of process by Sheriff —

Bender for Def^r — Sec. 21. N^o. 16 states that all services by — bailiffs on a holyday are null —

Friday 3^d. April 1802

M^c Allum v. Stevenson et al — Pltff. mo. to discontinue granted — without notice —

Molloy v. Mellote — action dismissed —

Cole — v. Church — mo. for giving security for costs granted —

Johnson v. Lukin & Econtra — Incidental demand admitted —

Guy v. Hawley — On Pltff^s mo. to ex. Wit^s who did not attend on Wit^e day — Object^n. that no reserve made of Wit^s — to be ex^d. —

Stuart v. Finchley — April 1811.

Bedard
vs
Archambault

Pluff moved to discharge the rule for trial this day without payt. of Costs, as the Wits subpoenad do not attend —

Rolland for Dfdt. objected, that rule ought to be granted on payt of Costs —

—

Mc Allum.
vs
Stevenson & Co

On hearing on Excep. peremp. à la forme —

Defendr. sued as A Stevenson & Co —, the excepr. that there is no such firm as A Stevenson & Co. —

—

Martin
vs
Ker. —

Action for wages. —
cont. over for proof —

Tiagouenté
vs
John. —

cont —

Saturday 4th April 1812

McAllum
vs
Stevenson.

Excepn dismissed. — Alex: & Co.

Guy.
vs
Hawley. —

Consid. that parties proceeded by consent without any entry made on the Register by the Judge. — a day given for further adduction of testimony of those Witn who were summ. to attend at last day of Enquête. —

Berthelet
vs
Munn —

The exp. of the arbitr. to be taxed hereafter — the parties to proceed to hearing on the award —

Poutré dit
vs
Dupuis —

Leave to file copy of Dedt. in Appeal, refused, as improper to introduce

Bricault — Bricault

Defr. lived at distance of 7 leagues from town, but was served wt. writ in town — Objected by him that he had not delay of more than 2 Days betw. return instead of 5. as the rules of Prac. have a reference to the place of residence of the Defr. —

Mo. rejected —

Kees — Marchand

Defdt. mov? that costs in a former action be pd. before further proceedings be had —

Pltff. Costs not taxed — and no demand is regular. ~~taxed~~ taxd —

Mo. rejected 1/ costs —

Derrick — Powell

Defdt. allowed default, and on day of taking it off moved ~~on Defendt. mo.~~ to reject exhibits as not filed at return of Writ — Gorgon for Pltff. mo. shd. have been made at return of writ —

Johnson — Seibert —

assumpsit for work & labor as Taylors —

Ogden. Insd. demand aft. one of Partners, Lambie, now deceased to wh. Pltff. object as inadmissible aft. a Partnership claim — Poth. Soc. N. 101 —

Rolland for Defts. contends that Insd. demand consist of 2 parts — for meat furnished as well to Johnson as to Lambie, & therefore he has right to set up this claim aft. Pltff — N. 144. 157 — upon decease of Partners there right in the Part. prop. becomes divided, each has an interest for one half — & therefore Insd. demand may be set up aft. death of each —

Dunlop
vs
Cuvillier

On Defendts mo. in arrest of Judgt—

~~Stuart for Defdt~~—

Ross for Pltff. This motion is too late— ought to have been made on the first day of this Term under rules of prac. sec. 31. & 32. — Not entered according to sec. 33. —

Stuart— Rule does not apply where a mo. for a new trial is made, and a mo. also in arrest of Judgt —

Impey
vs
Baker
& Contra

On trial before Special Jury—

action for recovery of pymt of certain wood & masts sold by Pltff to Defdt— Mutual Demd in non-performance of his contract & damages thereon —

Sewell Cutler. sworn, says he was in the service of Defdt. in winter Spring & Summ— 1811— The bill of the timber annexed to the agreet was made by Pltff during that time, & contains a statement of the Masts Bowsprits rec. by the Defendt—

The agreemt. admitted & read —

That there appears a change to have been made in a figure in the bill now shewn, since he made it out, being 2. tut instead of 1. 9. he made originally. & of which he kept a copy now produced in which the figure stands 1— according to the agreemt. this made a difference of 10 dollars in the price of bowsprit —

Depos. of Ph. Empey. & Mr Cyrsler on a Com. Roy. read —

Collins— says, that ~~that~~ he considers the value of the Masts & bowsprits mentd in the Statement now shewn to be nearly as stated in therein—

Evidence for Pltff closed —

Sewell Cutter – That no settlemt. was ever made between the parties in his presence nor in the presence of John P. Empey as far as he knows – That the value of the masts delivd according to the Contract wd. be £188.10. That q mast 81 feet in length. 2 of 78 feet – 1 bowsprit
the value of qh. wd. be £123. – prove several receipts for monies pd. by Defdt. to Pltff

William Johnson. says he last fall pd. £25 to pltff on act. of Defdt.

Philip Empey was produced as a Witt. by Pltff to impeach the character of Sewell Cutter – objected that Cutter was a witn. of the pltff on Principal demand & he cannot be rec. to impeach his testimony – Ans. that on the principal demand he was exd. merely to prove certain papers as having made out those papers – but the Incidental demand is wholly different object, and the Pltff is not precluded from impeaching the testimony of every witn. produced in support thereof – The Court admitted the testimony –

Tuesday 7th. April 1812.—

Stuart
v
Fischley

Pltff mov. to cont. cause of writ— Objected by Defdt. that party should have made his mo. on 1st. inst.—

Wednesday 8th. April 1812.

Portcous dal
v
Moses—

Mo. to reject a plea of Exception filed by Defdt as too late Default taken off on 4th & plea filed on 7th at 40 o'clock in the afternoon.—

Georgen. for Defdt. Sunday & monday were holydays on which no plea could be filed, & the plea was filed within office hours on Tuesday—

Thursday 9th. April. 1812.—

Thomin. &
v
Piccard
&
Archambault
Oppt

Oppn dismissed.—

Pangman.
v
Dupratt.

Judt.—

M.Kenzie dal
v
Deschambault

Judt— copy of Declaration rejected.—

Portcous dal
v
Moses—

Mo. rejected—

Wilson et al' v Sanford & Smith Opp^{ts} — On rule to shew Cause to morrow, respects rule of practice —

Bellows et al' v Henshaw & Spalding Opp^{o} — Deft^{s} moved that monies levied sh^{d} be p^{d} to him as proprietor on acct. of his rent. —
Pltff claims costs of discussion of the Opposn — of last Term —

Sax. v Lester. — 2nd mot
Deft^{s} moved to refer cause to Sermont decisions of Pltff —
Gale. Pltff lives in a foreign State, they have made their proof in the Cause, & it w^{d} be an unnecessary delay to grant the motion —

Sesta. — v Davis. — Defendt by Sullivan moved to ex. Pltff. on faits & articles. on first day in vacation. —
Gale. Objects to delay, claims a day in Term for such examination.

Blais v Merceaux — Pltff mov^{d} for cont^{n} of enquete. — Obj^{n} that Pltff proceeded to ex amn^{n} of his wit^{s} ex^{d} one wit^{s} & then moved for a further delay — & this after repeated delays already granted —

French — v Stevens — Pltff moved for continuance of the Enquete.

Charles v Stoss — Objected to mo. for time to plead that application not made till day when plea was due. Affidavit for procuring papers in offt, that Deft^{t} expects to be able to prove that he owes nothing to Pltff. —

Stuart for Defdt — He could not apply on Sunday or Monday for such delay they being holydays — That affidavit is sufficient in terms of it. —

Impey
Baker
& Contra

On Defendants mo. for new trial. —

1st Improper evidence allowed to go to the Jury. — In allowing Collins as a Witt to prove prices of masts & Spars generally, whereas the evidence should have been confined to the Contract, there being no evidence upon the Counts in the Declr for goods sold & deliv^{d}. — The Contract price was £188.10 — the general price sworn to by Collins was £244. — in deducting the £122. payts made by Defendts from the Contract price, the balance would be only £66.10. without any consideration whatever to the Incidental demand —

Stuart for Pltff The Pltff has put two Counts in the declaration one on the Special contract, and the other ~~on~~ a general count for wood sold &c — this was necessary, as the timber delivered did in many instances not fulfill the Contract, but as the Defendt rec^{d} them he ought to pay the value of them — and evidence of this general value was therefore regular and pertinent —





Triatt
v
Mears —

Stuart for Pltff mov^{d} for a day for hearing

Ogden for Defdt. The Cause was brot to issue two terms ago, & he is therefore entitled to 12 days notice under the rules of Practice —

Judt 10th —

Ritchie
M^{c}Craig
& Forbes opp^{d}

On opposition a fin de distraire — Boston for oppt contends that he has made sufficient proof of his demand & prays Judt thereon —

Beaubien for Pltff - The Oppost has not made out proof - There was a fraudulent sale from Defts to Opposant - there never was any tradition under that sale - effects in poss. of Defts when seized - a Sale is reputed to be writ of ought to have been produced -

Bottom - The effects seized were in the poss. of a 3d person, not in poss. of Deft as appears by P. V. of bailiff.

Valentin
v
Seguin

Action on indorsed note -

Rolland for Defts says. Defts did not know Pltff had got the note till he rec'd the sums Pltff ought to pay costs of suit.

Atkinson & Peterson
Stevens -
v
Lovis -

Action on Promissy note. -

Gale for Pltff demands Judgment for costs, the debt being paid. -

Stuart for Defts - Tender of debt & Costs made upon service of writ - claims that action shd be dismissed the pltff taking the costs he is entitled up to the time of tender, the further costs to be pd by Pltff - That Cause is irregularly before the Court, there being no issue before the Court. -

Gale - Facts in plea admitted - not bound to accept tender but in Court - entitled to costs up to tender made in Court -

authorities. Hume v. Peploe. 8 East. p. 168.
Giles v. Hartis. 1 Raym. 254
6 Bac. Abr. p. 457. -

Lacroix et al
v
Racicot.
& Contrarié

Debt on deed of Sale.

Lacroix for Pltffs demands Judgt. upon deeds filed. —

Solicitation by Defts. upon making the first payment stipulated the Pltffs were bound to give a Sheriffs title to the property sold. The first payt. was made before the action, and the deed in question was not filed but with the replication — That Pltffs are not entitled to any Judgt. agt. Defendts as they ought to have been put en demeure before any action could have accrued to the Pltff. The action was premature —

—

Cartier.
v
Grizé
&
Deschenetts
Oppts —

On rule agt Oppost. why he shd not be held to bring back a sum of £20 — which Defr. Grizé paid to one of the heirs Cheval under an Judgt. of this Court. 20 April 1811.

Lacroix for Oppost. That Grizé does not justify the quality of person to whom he paid the sum demanded to be one of the heirs of Cheval entitled to receive that sum of money as contemplated by the Judgt. of this Court — No proof that Grisé was ever troubled by the heirs Cheval, the transaction filed by him as made with one of the heirs is no proof of trouble —

Levesque for Defts. proof of capacity of heir, by act of tutelle filed by him — P. Verbal of sale of a land of the Community. & the Compte & partage rendered by the father of those children, shews that each of them is entitled to 500 ℔. —

Friday 10th April. 1812.

Oviatt
v
Means — } Mo. to set-down Cause rejected —

Storrs
v
Denan — } Cause ordered to stand over —

Bradlee —
v
Northrop & al } Trial by Special Jury on action for monies p^d
& ~~Contra~~ } for Defendants. —

Thos Jones. lives in Boston. usual com. to Auctioneers & Brokers to demand 2½ p^r Cent for goods sold by them — That Haywood is said to be a bankrupt. —

Verdict for Plff for sum demanded

Knight } On trial before Special Jury for damages for negligently
Aussum } driving a sled by Defd. whereby an injury was done to Plff.

Dr. Mattucen
Gabriel John } Wits for Plff
Dr. Selby —

Nicolas Roi —
Jn Marie Duplan } Wits for Defd^t —
Jn Bte Lenoir

Verdict for Plff. £10 — damages —

Raymond
& Julien

On report of arbitrators —

Bedard for Defendr submits case

Paquenté
vs
John —

Action for wages.—

Bedard for Pliff, moves that Excep. filed by Defr. be taken from fyles as being a second excep. filed by him — contends that Pliff was entitled to his Saisie arret upon the wood in question —

Stuart for Defendt. same excep. by plea instead of motion as allowed by the Court — The attachment is irregular. there being no affidavit to ground it under the Ordr of 1787. the affidavit goes merely to the debt, but states none of the circumstances under which an attacht. can issue —

Bedard. The Pliff had a privilege upon the wood seized for his wages, and by law could exercise the attachment to hold it —

Saturday. 11th April 1812.

Johnson v Walker.

Stuart.

Defend. moved to examine Pltff. on faits & art. on 15th inst. the day fixed for the trial by Jury.

Ross for Pltff observ. that the venire had issued & no therefore could not be granted under rules Prac. —

Obs. rejected.

Barlow v Dunlops.

Stuart moved to fix a day for ex. of Writ

Ross for Defendt. stated, that in the notice he rec. no day was stated on which the ex. of Writ was to be had, & therefore irregular. —

Stuart. The notice contained the matter to be agitated before the Court, as to the day it depends upon the Court to grant it as they shall see fit. —

Perrasval v Taylor

On action for share of expences in cutting a Canal in the Rawlets Suburbs. —

Ross for Pltff. asks for Judt. on evidence adduced —

Stuart for Defendt. No proof that Defendt was a party to the action by which P. Verbal was homologated —

That Syndics of a Proces verbal cannot maintain an action — That Judt. in the Inferior Court was coram non Judice. the demand in question being above £10 St — The draining of a marsh could not be done without an act of the Legislature, & beyond competence of the Inferior Court — That the Court has erected a Corporation by naming Syndics, with power to perpetuate themselves, to oversee the Canal in perpetuity —

Ross for Pltffs The Inferior Court has jurisdiction over future and real rights as well as sums to the amount of £10 Stg. — The Defendants lot of land included in the P. Verbal regulating the mode of draining the lots — ~~Thos Scott Esqr~~ was the Defendants auteur, he was a party to the Suit —

Campbell
v.
Stevenson
&
Walker Oppt

On rule on Pltff why opposition of Walker shd not be taken pro confessa —

Boston for Oppt cont that under rules of Prac. 19 Oct. 1811 the Oppos: ought to be considered as admitted, the Oppt not having within 10 days given any notice to fyle any moyens in support of Oppos:n —

Wilson
v.
Sanford
&
Smith Oppt

Opposition afin de conserver to be admitted.

Stuart for Pltff. The rule of practice is contrary to Law. — all opposants are Pltffs their rights liable to be contested by all the parties in the Suit — the default of contesting the claim cannot admit it, so as to be considered or taken pro confesso but merely to admit such Oppt to proceed ex parte or by default — That he has made no Oppos:n afin de conserver but Oppn à la délivrance, qch is sufficient therefrom, which the language of the rule of practice does not apply — That the Oppos:n made by Walker is not of that description mentd in the rule, being an Oppn in order to stop all proceds

Boston. The Oppos:n made by Oppt is within the rule as it is general — and must be considered as being afin de conserver. —

Webster
v.
Proctor & al

On Pltff's mo. to amend his exception — to add word "not" & to sign name "Samuel Gale" as atty for Defts. to bottom of plea —

Stuart for Pltff. This mo. made in consequence of Pltff's mo. to reject the exception, for the same grounds which are, that the exception was not signed by any person. — That no amendments are allowed &c are not for the advancement of Justice, & here ought not to be allowed — the exception to be amended being frivolous. —

Gale for Defts. The matter of exception pleaded by Defendants is material, by reason of the defect in the pleadings on the part of the Plaintiff —

—

Lacroix
v.
Ryon

Action for Lods & ventes, due by him as well personally as hypothecairement. —

Lacroix for Pltff. Lods ventes claimed on Donation, because the charge is of equal value with the land given — 355. Ch. 58.
Pothier. —

Bacon for Defts. Quest. if Lods ventes are due on act of Donation of 24 March 1807 by Labelle wife to his Children — No lods & ventes are due on such donations — so adjudged in this Court — Difficulty on deed of 28 July 1811. being an act of Retrocession to the widow remarried — the effect of that retrocession being to liberate the donee from the pay[t] of charge in the deed. Pothier Traité des Cens. Rescision du Contrat. Lauds & Ventes. Desmaisons
Pothier. Lw. 3. Ch. 37 pag. 259 — 360 350 pa. 350. Lacombe. v° Lods & Ventes. Pothier. Traité de Fiefs. 1re partie Ch. 5e part. 1re sec. 1. art. 1 — coroll A. p. 324. & 330.

Mowatt v. Swan.

Action on bill of Exch.

Stuart for Defdt. That Defdt. had no domicile within Jurisdiction of the Court at the time of service of the process. nor at any time before, so as to make the place of Service his dernier domicile. —

Ogden for Pltff. That there is proof of Defendt having had a domicile in Montreal at place where Servic of process was made. —

—

Cameron v. Baker.

Action of Trover & Conversion —

Bolton for Pltff. claims Judgt. on evidence adduced

Ogden for Defdt. says, that Com. Rog. has been irregularly executed - there being no answers taken to the Cross-interrogatories, no oath of Wits sign their depositions

That one Hare is an interested witness - and the papers produced by him ought to be rejected as having been put into his hands by the attorney of the pltff. The land was sold to Pltff, long after the timber cut thereon had been carried away by Defendt. who had a permission to that effect from one Hare who sold the land to Pltff. —

Bolton in reply - The objection to the regularity of the execution of the Com. Rog. should have been made at time when Mo. was made for publication of the Com. That the Com. has been regularly executed. That Wits have not signed their depositions - no rule of practice requires such signature - If necessary, an instance has occurred where the Court allowed an amendment, after hearing on the merits - Porter v. Marston. Feb. 1809.

Amesse. }
v. } Over
Sailleur. }

Johnson tab'
v.
Metchler

on action of assumpsit. —

Stuart for Defd. pleads delay for payt — that action was premature —

Ogden for Pltff. delay given conditionally —

M'Gillivray.
v.
Robitaille

action for Loss & rentes —

Stuart for Defdt — Executors cannot bring action touching the real property — Defend. not personally bound for part of the cens & rents, but only hypothecarily — this ought not to have been joined with the personal action — Part of Debt ~~demand~~ is due in kind — demand is made for money, which is irregular as an option shd be given Defd. to pay in kind —

Ogden. for Pltff. Exrs are vested with the Estate till majority of heir — action is a personal one for a debt due to the Estate — as defend. did not pay in grain at the time the rent was due, he must pay in money.

Burnside
Chaubert
Marmier

Opposition afin de charge -

Lacroix for Oppost. claims that the wall between his house & that of the defendant, now taken in execution, be sold as a mur mitoyen - Defendant says that the question raised by Oppost. is a chose jugée. which is not the case, as the pignon was not in question, but the mur d'alonge in the former action between the parties.

Bolton for Defdr - contends that claim of Oppost. has already been determined. -

— —

Lange
Tremblay

Action of debt on Obligation -

Bender for Defdt - The obligation was transferred by one Simard to Pliff, & Defdt has same right of defence agt Pliff thereon as if Simard had brot the action Poth. Con. Vente. No 558 - pleads, that he never gave value for Oblgn. that it was extorted from him by force and that the transfer is simulé, in order to prevent Defdt from setting up the above grounds of defence -

L. M. Vezé - Defdt is too late in this defence, the transfer of the Oblgn was signified to him when he shd have intimated these reasons to Pliff, that he might

Monday 13th April 1812

Witness-day.

Tuesday 14th April 1812

Witness-day.

Wednesday 15th April 1812.—

Johnson dal
v
Lebert. — } Judt — ✓

Tiagouenté
Jolin — } Saisie anet quashed — ✓

Sax
Lesster. — } ✓ Mo. to submit demand to serment decisoire, rejected, as Plff lived in the United States, & as no diligence was done to procure Writ —

Johnson
Metchler } action adjudged premature — ○

Lange
Trimbley } a day given for proof. —

Webster
Proctor } Each parties allowed to amend without payment of Costs —

Cameron ~ Baker

The Court gave a day to Pltff to defeat the Com. Rogr by obtaining the signature of the Witt to their respective depositions. —

Stearns. qu.t. ~ Prohibited Goods & Kng. Claimt.

The Pltff demanded security for costs upon claim made by King for part of the property seized —

Stuart for claimt. says that he is a Defendant, & cannot be cossd. a Pltff under the rules of Practice —

Johnson ~ Walker

action for wood & masts delivered — Trial by Jury —

Simon Clarke. was employed by Pltff to take some masts & pine timber to Three Rivers last July — Pltff told Wt that he had written to Defendt (which was now produced & read under a notice to Defendt —) masts &c were delivered & no objections made to the prices stated in the letter rect. instructions from Pltff & Defts. did not take the said timber & masts at the prices mentd. in the letter he shd. proceed to Quebec with them — but was in consequence of Wts understanding that Defts. had taken the timber at that price that he did not proceed to Quebec — That Defendt. paid to Wt £18. on acct. to pay off his hands. —

Pltff Defts did not make any condition or bargain about drawing the masts out of the Water &c. when called upon making any bargain about them — That Wt had the masts hauled out of the water, as Defendt. refused to pay the people for doing it —

James M Donall — proves prices —

Lacombe vs
Robillard

Action for Customary Dower.—

Rolland for Pltff. Quest. whether the land in quest. is subject to the Dower— The Defendt gave 2 lands to their son the Pltffs late husband by the mar. contract— & it is upon these lands the dower is claimed—

Ross for Deffte. The action is premature— as the lands in question could not have become the property of her late husband until the year 1813 That no dower therefore could attach upon it— That the Donation is not accepted by Pltffs. late husband— That Pltffs mar. con. was never insinuated— That poss. of land was never given— That land was subject to certain rents. which has not been paid. —

+ Dic. de Droit vo acceptation Nouv. Denizt. vo Donation par contrat de mar.

Rolland. No accept. is necessary of a Don. by a mar. Con. see art. 10. ord. 1731.* — The retention d'usufruit by Donor is suffte habitat of the property Pic. Coutu. 313. 321. Prop. 208. q. 10. — That Defendts have become heirs of their son has such bound to pay the Dower without any burden, they have lost their right of charge to the annuity by having become heirs— they cannot be Debtors & Creditors of the same person—

= Renusson. ch. 8. p 191 No. 11. =

Ross The Defendts whether heirs or not cannot be deprived of their rights upon the land as originally given, vnt Rente

Judt 19 June 1812

Munro
Porteous

Action to account—

The Defendt pleads that Pltff was his clerk & not a Partner & thereupon sets up an Incidental demand at Pltff to account. which Pltff contends is not admissible & cannot be made as not arising out of the action—

Ross for Defendt says that he does not admit the existence of Partnership stated by Pltff, but that he is entitled to have an account from Pltff as his agent—

Charron dits
Petro. & } action for part. of certain articles of rente & pension. —

Bedard — Only question is respects Cost — under facts proved —

—

Berthelet
vs
Munn
& Contra } On report of Experts —

2 Reports made — Rolland for Plff contends that Report of his Expert ought to be sworn —

—

Joubert
vs
Barlow } Action for recovery of money for navigating wood for Defd. to Montreal —

Mr Herse — asks Judgt. on testimony adduced. —

Stuart for Defd — Plff has joined different contracts & demands in the same action, — the Contract is stated as a joint Contract but proof shews it to have been several with several persons. The ant. of each of the parties who have assigned their rights to the Plffs stated in that assignment that a certain sum was due to them as by their ants annexed, whereas no such accounts appear to be annexed That he has proved that those men refused to do their duty — whereby Defendt. suffered loss —

—

Lacroix
vs
Paris
& Robitaille } Hearing on report of Experts —

Exception that the Experts have not been sworn —

Sanson dux. } Action for balance of promissory Note made by Defend^r to
Moses & Meekle } Plff^s wife – stated to be a marchande publique. –

Rolland for Plff^s demurs Def^t on case on proofs in Cause –
Sullivan. No proof that Plff^s wife was a marchande publique. –

~

Duval. } Action for certain arrears of rent due by Defend^t. –
Desmoyers }

Rolland for Plff prays that the claim be referred to practicians to ascertain the nature & extent thereof. – Object^d Defend^s right to the moveable property given by the deed of Donation, as there was no specification thereof – no list made annexed to Ordⁿ of 1731 art. 15 –

Vigé for Defend^s that he has right to the effects & debts left at time of the decease of the late Dubreuil père –

~

Thursday 16th April 1812.—

Munro. } order for proof.—
Porteous }

Wagner et al. }
McDonald & Mossay } Oppositn dismissed.—
Forbes, oppt }

Blais. } mo. for further enquête rejected.—
Mercereau }

Henchi } mo. granted for contre of Enquête.—
Stevens }

Campbell } on mo. for cont. of action in prosecutn sale of effets — the Oppst. in house
England } rent opposing the same, as their privilege is prior to claim of Pltff
Dufaut }
England }

Tuttle. } action of debt on Judgt
or } On Petition for a re-hearing —
Berry }

Gorgen for Defdt — Pltff cannot have an action in this Court upon a Judgment in the Inferior Court — By Ordre of 1785 it is declared that no execution shall go out Lands on a Judgt. in the Inferior Court — Nullity alleged aft. the Judgt. in the Inferior Court (gt was obtained by surprise, but which cannot be enquired into by this Court — That Pltff shd have his remedy only in the Inferior Court by suing out a new Execution thereon

Ogden for Pliff. action must lie on a Just. as well as upon any other claim — The Defendt has no other property but a lot of land, for the sale of which the present action was brought as Defendant had left the Province, and no other recourse was left to Pliff —

—

Casson & Henderson & Huskins & Fort

Huskins & al. Opp[s]

On Opposn a fin de distraire

Ogden for Opposts — claims that upon shewing their title to the lands in question the land may be adjudged to them without going into proof of possession under that title — as no contest has been raised by any of the parties —

Beaubien — object that this is asking of the Court an opinion as to course to be taken, —

—

Dom[e] Rex Pre[r] Talon

On Defendants motion to call in his Garants —

Sol. Gen[l] The Defendant is too late in his motion, he not having filed any plea. —

McGill & Burton & King

On action en bornage —

Sol. Genl. There is not suffit in the plea to shew that the lines of the Seigniory of Noyan, had been run by the consent of the Crown —

Pro. Cw. 1 vol. p. 77. Intervn The Intervention

Dyden for Defr alledges, that the line has been run between the Seigniory of Noyan and the Township of Stanbridge — If the line is to be run again, all the Individuals who have property or lots upon the line between the said Seigniory & Township, ought to join in their action en bornage, as Defend. ought not to be liable by an action to each of such parties — The Intervention is for a bornage of such of the lots as belong to the King which has nothing to do with the Original action, being another and different demand —

Beaubien for Pltff contends that a new line ought to be drawn

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Bradlee & Northrop

On mo. for a new Trial —

Sol. Genl It was in evidence, that Hayward should be the agent of both parties, and that the Pltff agreeing that said Hayward should keep in his hands the monies in question, the loss of those monies by the bankruptcy of Hayward, ought

to be sustained by the Pltff, under the consent he so gave — upon to the evidence of Haywood —

Oblig. no. 480. 489 Haywood was the person indicated to receive the money due to Pltff by his consent, & payt. made to him was therefore the same as made to pltff himself — & one mode could not be altered by any one of the parties —

2. Comyns on Contracts. p. 249. money pd. by A. to B. for the use of C. the latter may recover it from B. by action of assumpsit —

Stewart for Pltff — The goods were deliv.d to Hayward under the order of the Defendants & the pltff thereupon acquiesced to take his money from Hayward, but Hayward did not become the Debtor of Pltff so far as to discharge Defendants — Oblig. no. 569.

Gillespie. Wadsworth } Wadsworth Oppt.

On opposition of Defend.t afin d'annuller —

Pltff obtained a rule on Defend.t to shew Cause why oppos.n shd. not be dismissed as he had not filed his reasons in support thereof according to the rules of practice —

Stewart for Defend.t — There is no definite time prescribed for filing reasons of Oppn. p. 96. 97. rules refer generally to other causes as to pleadings to be filed thereon — and in some cases those pleadings are to be filed in three days and some in ten days — & therefore he ought to be within the latter — That when the opposition itself contains sufficient grounds, it is unnecessary to file any moyens, but the Opport. may rely upon such opposition without filing any moyens, q.d he now does.

That the Judgt rendered for the Defendt contained a stay of Execn. until June next - that Execn has been granted without any order of this Court which is irregular -

Ross. relies on the practice of Court, as to moyens d'oppn being filed within three days - That delay was given to Defendt only upon condition that no other Creditor shd take any proceedings against him - this condition was destroyed by a Capias having been sued out against him by one of his Creditors and thereupon the Plff was entitled to his execution - That the rule lately made respecting the filing of pleas in ten days cannot apply to Oppositions and the practice has been otherwise.

Donegani
vs
Denoyers
Séné Oppt.

On opposition of Séné claiming certain parts of the effects seized -

Sullivan for Oppt. says his claim is supported by proof

Ogden for Plff. the goods were found in the possession of the Defendt. Therefore he was justifiable in seizing them - & costs ought to be allowed thereon, if the property be allowed to be given up to the Oppost. -

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McGillivray
& al
vs
Bowe. -

on action for cens et rentes -

David McKenzie } Defend. submits case —

Baker Pothier } action on a deed of sale —

Lacroix for Pltff. action for balance on a deed of sale the only difference between the parties respects the Costs of a certain decret to be made of the property sold, under a condition that if the debts due on the property amounted to more than £60, the Pltff shd. pay those Costs, & that if it were less the Defend. shd pay them — The amount of the claims by Opposs under the Sale amount only to £42 and therefore the Pltff is entitled to the Costs of this decret —

Bedard for Defr — The question is whether there was more mortgage debts due by Pltff at the time of the Sale to Defendr than £60 — and not at the time of the return on the Writ of Execution under which the decret was made — There appears to have been a much greater sum then due, but which was paid in the interval between the Sale & the decret —

Lanctot Lanctot } action of debt on deed of Sale, and on an award —

Sullivan for Defendt — That as to the debt due on the deed of Sale he does not owe it — there being a confusion in the person of the Pltff under a donation made to him by the Defendant, in wh this debt is mentd cites Pothier — Confusion — Obly. No. 642

Admits that this donation was afterwards rescinded by the parties but this did not revive the Pltff's debt, as it was one destroyed by the said Donation, it wd require something more express than the mere resiliation of the deed of donation —

—

Gillespie
&
Wadsworth
&
Hawks Sal

On mo. for security for costs from oppost before he be allowed to proceed, as he resides out of the Jurisdiction of the Court —

Sol. Genl. The appr for costs made only yesterday, whereas the writ was returned on the 9th — Therefore the mo. is too late as he ought to have made his mo. within 4 days after return of writ — cites case Lee v Senter & Dole where oppost was held to give such security, on default whereof the oppos: was dismissed That Pltff lives out of the Jurisdiction of the Court & not entitled to such security —

6.21.

Ross for Pltff. Contends that the 4 days for demanding the security for costs run from the time of filing the moyens d'opposition & not from the time of the return of the writ of Execution, as the opposition put into the office might have been frivolous —

St Hilaire
vs
Jeannot

Debt on Obligation —

Ross for Defdt. offers to submit the case to the Serment decisoire of Plff.

Friday 17th. April 1812

Bradley
vs
Northrop et al

Rule to shew cause why a new trial should not be granted, discharged. —

Impey
vs
Baker.

Same order on rule —

Gillespie
vs
Wadsworth
&
Wadsworth
opp.

The opposition dismissed — the Court being of opinion that the opposant was bound to file his reasons of opposition within the three days after notice — that after the three days had expired the Oppos. was in default, and too late to allege that he had no further reasons to give than those stated in the opposition — made to the Sheriff. —

Rousseau
& Mathurin

Action on promissory Note. —

Mr. M. Vigé for defend.— pleads prescription to the note which was given by Defend. in 1805, since which time there has been no act done by Defend. to interrupt that prescription — That one Porteous proves that he paid to Defts dividend to Plff on acct of note in 1807. — he is an interested Witness — he having illegally carried off Defends effects sold and distributed the same among his creditors, which he says was with Defends consent — this he is interested to prove to exonerate himself, and to shew the Defends had acknowledged debts then due by him —

Stuart for Plff - maintains that Porteous is a competent Witness and his evidence decisive to shew the acquiescence of Defend. to the existence of the debt due on the note within the 5 Years. —

Oldham vol
&
Lacroix
&
Limoges
T. Saisi

Action by Saisie arret on Judgment. —

Sol. Gen. for Plff. states that the monies stated to be in the hands of the Garnishee have been claimed by Jos. Turgeon, under a transfer thereof made to him by the defendant, which he contends to be

fraudulent

fraudulent and illegal transfer been made a short time prior to the pleintiffs Judgmt. as Defendt.× and therefore contends that it ought to be set aside and the monies in the hands of the Garnishee ordered to be paid to the regular creditors of Defendt

× at a time when Defendt. was a Bankrupt

Lacroix for Jos. Turgeon, Intervening party states that the transfer made to him by the Defendant, was given and signified to the Garnishee before the Service of the Saisie arret which vested in him the right to the monies in question. —

Derrick
vs
Jewell

Debt-on Obligation —

Davidson for Defendt. stated, that before the institution of the present action, the plaintiff assigned the bond or Obligation upon which this action is — brought to another person, whereby he divested himself of all right therein — & therefore cannot maintain his action —

Georgeon for Plff - The present assignment in — question is null - being sous seing privé — and if it were not, the plff is entitled to sue in his own name for the benefit of the assignee. —

Guy
vs.
Hawley

Action of assumpsit for goods sold

Gale for Defdt. says, that pltff has not made proof of his demand - has exam^{d}. Defend^{t}. on faits & artes who acknowledges to have received the articles in question, but avers that he paid for the same before the institution of the present action - This confession cannot be divided Poth. Obl. N^{o} 827 - therefore action must be dismissed

Georgel for Pltff - contends that he has made further proof in the Cause besides the oath of the Defendant - That Defendant cannot by his answers make a proof for himself this answering, that he had paid for the goods, was answering to a question not proposed to him - & cannot be admitted -

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Blackwood
dal^{r}. -
vs.
McLarendale

Action on bond assigned to Pltff given by Defend^{t} for the forthcoming of certain Staves seized by the Sheriff under a Writ of Saisie Revendication. -

Ross for Defend^{t} - pleads. 1^{o} General Issue & under this plea he is entitled to allege, that the bond is alternative either to pay money or deliver the Staves, and the Defend^{t} ought to have the choice to do either - but here the action is for the penalty

penalty which is irregular, and ought to have been in the terms of the bond - cites. Poth. Obl. 248. — That there is a variance between the bond and declaration touching the day on which the original action was returned into Court the bond states it to have been on the 2d. of October, and in the declaration it is stated to have been on the 20th. of October, and therefore the parties may be vexed by another action on the same bond. —

2d. The defend.s contend that they are bound only to return the Staves which they are ready & willing to do — It is the thing seized which was delivered over to the Defend.s which ought to be demanded and not money in lieu thereof — cites. Rep.re de Juris: v.o Revendication. p. 620. 622. Poth. Obl. N.o 532. 533. - also. N.o 243. A. 5. 6. 7. Rep. de Juris. v.o Obligation. Domat. liv. 1.

3d. That even if Plff.s were entitled to recover they have not made proof of the value of the Staves, which only they can be entitled to and not the penalty of the bond which is double the value of them, as appears on the record —

Stuart for Plffs — The action is regular, and is the only one that could well have been brought, owing to the nature of the security given, which is a bond in the English form, upon the payment of a sum of money to be void on the performance of a condition that therefor money being the principal thing ~~done~~ due, and the Condition avoiding the pay.t of it not having been perform.d

perform^d. the right to demand the money, which here is the penalty of the bond, is unquestionable. —

That a formal protest was made in May 1811 ag^t. the Defend^t. M^cLaren, who was the person bound to deliver up the Staves, requiring him to do so, his neglect has given right to Pltff to demand the penalty of the bond from all the parties, as the other Defendants undertook for his due performance of that undertaking —

That the penalty is the legal measure of damages in this Case — to have avoided it, the Defendants ought to have pleaded and shewn that the Staves in question were of much less value than the sum demanded, and that this value only should be the measure of damages to which, the equity of the Court sh^d have been called to moderate the penalty. but as nothing of this kind has been pleaded or shewn the Court must take the legal presumption that the penalty does not exceed the true value of the Staves —

M^c Callum vs Stevenson & Co

Action on Promissory note. —

Sullivan for Pltff — action on a joint & several — note made by Defendants and another person, ag^t. whom the pltff has discontinued his action —

Boston.

Boston for Defts The Defendants are sued as Partners and no proof has been made of any partnership between them. — That the defendants having been sued as Partners cannot be condemned individually, and proof has been made against one of them only as having signed the note — That the Pltff had a choice of action on the note either to sue the Defendants jointly, or any of them separately, but having sued them jointly, he must recover of them jointly or not at all, he cannot have a Judgment of one of them — cites. Kyd. on bills. p. 186 — 2 Pothier by Evans. p. 62

Sullivan in reply, according to the principles laid down by Pothier. Obl. 270. 271. a recovery may be had against all or any of the Defendants in this action the action being several as well as joint, and all may be sued and Judgt rendered of either — Poth. Obl. 270. 271. —

Blais
vs
Mercier

Trespass in pulling down part of Pltff house

Stewart for Pltff. states that proof has been made of. one of Defends Tremblay — and as Pltff could not attend to make complete proof — as to the others, offers to submit what can to Expert —

Rolland for Tremblay — contends that no proof has been made of him — that Pltff is too late to propose a reference to Expert —

Sol. Gen. for other Defends agrees to Pltffs proposal of a reference —

Gillespie
&
Wadsworth
&
Hawkes
Stevenson
Stevenson & Buckmaster
Godwin & Sons
Sat. opp^t

On rule obtained by Opposants on Plff. to shew Cause why he should not be held to give security for costs.

Ross for Plff, says, that Plff has obt^d a Judg^t as^t Defd^t and was proceeding in the execution thereof when the Opposants in this Cause stopt his proceeding by their opposition — That an oppos^t is not entitled to demand such security from the Plff who must be considered as a Defend^t upon such opposition as he must necessarily oppose the same, and it would be unjust to compel the Plff, to give such security to 20 or 30 oppos^ts who might come in with claims merely for the purposes of delay — That the Opposant is besides not in time to ask such security, not having demanded the same within the 4 days after the filing of the Moyens d'opposition.

Gale for the Opp^ts — The Plaintiff not living within the Jurisdiction of this Court he must be considered like any foreigner as to the security for costs — and the St. 41 Geo. 3. expressly says, that every such person is liable & bound to give security for costs upon all Seizures, oppositions and original actions.

The Court were of Opinion that the Plff having obtained his Judgment against the Defend^t was not bound to give security pt costs to any opposant, and that he could have been held to give such Security only upon the Original action —

Perry
v.
Millar & Parlane

Action for recovery of Staves —

Stuart for Pltff - contends, that having obtained an order to examine the defendants upon faits & articles & served copies of the Interogatories upon both of them in consequence, only one of the Defendants attended and was examined on the day appointed, the other, Parlane, not having attended, the Pltff is entitled to have the faits & articles taken as confessed agt him or that a day may be given to Pltff until the said other Defendt to give in his answers to the said faits & articles

Boston for Defrs says, that the Cause having been fixed for hearing on the merits, the Pltff is not entitled to a further hearing of any witness or proof to be taken under faits & articles - that if Pltff had meant to draw any benefit from the non-appearance of the Defendt Parlane, he ought to have moved to get the Interogatories proposed to him declared to be held as acknowledged before the Cause was fixed for hearing, not having done so the Cause must be heard on the proofs now before the Court - And as the Pltff has made no proof whatever Defendts are entitled to have the action dismissed with Costs upon the offers they have made to deliver up the Staves in question —

Bellair
vs
Perrault

Action to recover value of a schooner sold to the late Tavernier.—

Stuart for Defdt. The defendant is sued as tutor to the minor child of the late Tavernier, the purchaser of the schooner, but no proof has been made either of the decease of Tavernier, or of that the minor child is the legitimate offspring of this Tavernier. That there can be no recovery against the Defendant upon the present deed of sale, there being no mention made therein of the certificate of Registry of the vessel sold, which is required by the Stat. 26 Geo. 3. ch. 50.—

Rigé for Plff in reply, says, that the late Tavernier was drowned which rendered it impossible to procure any extrait mortuaire of his death — but the fact is sufficiently ascertained by the joint application of all his relations praying an appointment of a Tutor to his said minor child.— That by the deed of sale of the vessel it appears that it was just off the Stocks at the time of the Sale and the Plff had not had time to procure the certificate of Registry in question, but it was agreed that the Plff should one it out & deliver it to the purchaser when required. That Defendt. not having mentioned this in his plea, nor made any demand of such Certificate till now the Plff did not consider himself bound to make any tender thereof, but now produces the said certificate.—

when the Defdt was named & accepted of that charge. & he cannot be admitted to deny those facts under which he holds his appointment

Gillespie
vs
Wadsworth
&
Hawkesdal
Oppts.

On Pltffs motion for security for costs from the Opposants upon their respective oppositions as being resident out of the Jurisdiction of the Court —

Gale for the Opposants — States, that in consequence of notice from the Pltff, he has filed his reasons of Oppos^{n} on the 13th inst^{o} and the present motion made on the 15th is too late, such right being waived by Pltff by his notifying the opposants to proceed by filing their reasons of opposition —

Ross for Pltff. The party is not regularly before the Court until he has filed his reasons of opposition & he is in time to make the motion —

Saturday 18th April 1812.

Campbell & England v Dupant & England & Oppost — ✓ The Court were of opinion that the Costs ~~ought~~ of the Exon & seizure shd be allowed upon one of the Causes

Atkinson & Peterson v Lowes — ✓ Costs up to time of tender, but all subsequent costs to be paid by Pltffs

Wilson v Sanford & Gayne Oppt & Smith — ✓ The Court were of opinion that the rule of practice touching the admission of oppsn after lapse of 10 days that such default did ~~not~~ operate a proof of the oppsn so that the Judt shd follow thereon — the parties are concluded but proofs must be made in support of the demand. as in a case by default.

Campbell — v Stevenson & — ✓

~~Sanson~~ — ~~v Moses & Merkell~~ — Judt in favor of Pltff — the proof of marchande publique not so material, where it appd that the Note was given for ~~the~~ effects the property of the Husband —

Rousseau v Mathurin — ✓ Judt for pltff. the Court being of opinion that there was a promise proved within the 5 Years —

Mowatt
vs
Swan — } ✓ Judgt — admitting service of process as sufft —
Judge Reid differed in opinion. —

Amiraux.
vs
Riopelle. } Judgt —

Gillespie
vs
Wadsworth
& } ✓ mo. by Plff for security for costs from the Opposants
Sundry oppts rejected, the Court adjudging that the Plff had waived
his right to such costs by notifying to him to file his
reasons of Opposition — Fowler. vs Eldridge & Meaver oppts —
16 Octr 1806. — Lee vs Sinton. & Dole oppts. Febry. 1812. —

Dunlop
vs
Cuvillier } ✓ mo. in arrest of Judgt dismissed as too late, not
having been made until the 3d day of the term ensuing. —
that on which Judt had been given on mo. for new trial —
and Apl —

Derrick
vs
Sewell } A day given for proof of the assignment of the obligation
to another person. —

Donegani
vs
Desrogers
& } Plff condemned to pay costs, as the goods of the oppost were
Seni oppt not in possession of Defdt when seized —

Oloham et al
vs
Lacroix
&
Turgeon
Intervs.

a day for proof of the Insolvency alleged

McCallum
vs
Stevenson & Co

Judt. as. one of Defdts. Alexr. Stevenson, the proof of the partnership not having been made out —

Gray
vs
Hawley

A reference made to the Arbitrators —

Belair
vs
Perrault

Judt —

Quinville
vs
Chartrain

The defendt. ordered to account — the writs set aside —

Lothinière
vs
Forbes —

Action dismissed —

Bellows
vs
Marston

Plff moved that rule for new Exn be made absolute —

Johnson
vs
Walker

on motion for a new trial — reason, that verdict is contrary to Evidence — The only evidence of Contract was Plffs. own letter but the terms thereof were never accepted, only Witness is Clarke whose testimony is controverted by evidence of Lauziere, a more competent Witness —

On Incidental demand, the Jury have not allowed £31 — for drawing the masts out of the Water £3 — for cutting them to which Defend. was entitled under any point of view of the Case —

Ross for Plff — all facts have been stated to the Jury & has been considered by them. —

Monday 20th April. 1812. —

A Commission was read appointing Alex. Reid one of the Joint Prothonotaries of this Court. —

Cusson
Henderson
Trois opp.
} Proof ordered —

McGillivray
Bouc —
} 

Blackwood
McLaren. —
} Rule for proof of claims on 20 Oct. 1812. —

Lamlot
Lamlot
} Judt. for debt — as demanded, the revilation of the donation reviving the debt —

Baker
Pothier
} Judt —

Duval
Desnoyer
} ~~Exports~~ — Practicien named.

Blackwood et al. vs Labelle — Judt. for Plff. ordering Defendt. to abandon the land to Plff
Cause heard 10 Oct. Inst.

Johnson vs Walker — mo. for new trial rejected

Lacroix vs Young et Young. Gart. — Judt.

Joubert vs Barlow — Judt. for half of wages — Ch. Just. differed in opinion —

Bellows et al vs Hinshaw et Spalding opt — Costs on oppos. divided — Costs of the Saisie & Sale only allowed to Plff prosecuting — the rest of the monies adjudged to oppt in Dant of Farm —

Lacroix vs Paris — Robitailles — The third expert not having been sworn — a new reference

Piquet vs Marion — on report respecting rights of farm — Plff to pay Costs —

Mure & Joliffe vs Means et al — mo. for evidence in vac. — objected want of 14 days notice — refus to cer of Drake vs Gouseau —

Lachaussée. v Delonguemil

The Cause had slept from 1800 without proceedings, which the Court called up in order to dismiss the same under the rules of practice for want of proceedings —

Stuart for Pltff. strongly contended the power of the Court to make the rule of practice

Gillespie v Wadsworth & Wadsworth &c

On rule obtd by Defts. on Pltff to shew Cause why the Writ of Extn sued out in this Cause shd. not be superseded as having been sued out improvidently and contrary to the terms of the Judgment —

Ross for Pltff — The Atty. has no authority to make such a motion, the Rules of practice require a power from every person for whom he appears — That Defdt. has absconded and now lives in a foreign Country, therefore such authority becomes more prerequisite — The Stay of execution was conditional — the Condition happening, the stay of Execution was removed and the Pltff was entitled to his Execution —

Mitchel v. New Zeal — 2 Raym.

Stuart for Defts — although a default was incurred agt. Defdt in the original Suit, he is not to be precluded from objecting to any irregularity in the subsequent proceedings of him —

No extn. shd have issued contrary to the record — to have altered that record wd have required an application to this Court, who upon examination of the fact wd have given the necessary relief — The Judges in vacation could not have granted it — That there was no ground for suing out the Execution

June Term 1812

Monday 1st June 1812.

De Beaujeu v. Chatel — The Pltff's Counsel discont. his action as to one of the Defendts and prayed Judt. as the other on the proofs adduced.

Sawyer for Hyde — Action petitoire. —
Sol. Genl — excepted to Pltffs declaration. — That Dunn could not affix seal of Crown to grant — 2. Does not allege that Pltff ever had poss. of the property
The Cause was discont.

Tuesday 2. June 1812.

Douglass v. Bessette — Mo. for that papers filed in one of the Causes shd be considered as filed & rec. as evidence in the other Causes
Rejected. —

The King v. Laporte Hal. — On Habeas Corpus. —
Stewart for Prisoners states that they are charged

merely

merely a misdemeanor, their obstructing the execution of the laws.

Barlow
Dunlop — Pltff mov^d for hearing —
Ross for Defd^t objected, that a day was reserved for the ex. of 2 of this Writ —
Stuart objects, that Defd^t. sh^d have moved for such ex^n of reserved Writs on the first day of Term —
Mo. granted —

Bedard
Archambault — Defd^t objects to trial as he had not rec^d "notice of trial two full days" —

M^c Dougall
Herrick — On rule Nisi, why Ex^on sh^d not issue on Judg^t —
Georgin for Defd^t — Process served at the elected domicile in a deed whereon Defd^t & another person, gr^s was transferred to Pltff of the Defendant — not repealed — as by Ord^n of 1785 — that kind of service is abrogated —
Sol. Gen^l for Pltff. elected domicile is valid & suff^t for every purpose relating to the deed in q^n it was made, either between the contracting parties or those standing in their right —

Judg^t for Pltff

Eagar
Clarke } action on assumpsit for goods sold

Boston for Pltff asked Judgt—

Ogden for Defendt— says Pltff was in poss. of a note belonging to Defendt. q. he has not deliv: up—

Wednesday 3d June 1812

Hays
Fresher } Beaubien for Pltff, objects to charge of 222 l. charged in the Ch. de depense, for servants wages — no proof to support the charge. —

The Immovable property has not been truly estimated —

The rente upon the land sold to Poirier over-rated —

The amelioration on the land of J. Poirier allowed, q. the Pltff have no point, ought not therefore to be charged as them —

Ross for Defdt— The Board. have consid. the value of the lot same as at the time of the dissolution of the Comty— but agree that Pltff may have share of the land, reserving the part where the Defdt built his house to him — or to pay to Defdt his expenses & improvements made on the land — Same offered as to the land sold to Poirier —

As to Wages charged by Defendt the oath of master ought to be received —

Wilson
v.
Smith et al

On mo. for security for Costs—

Gale for Defendt. An affidavit was made on the part of the Defendt. to shew that Pltff lived out of the jurisdiction of the Court — a day given for proof thereon no new proof adduced — question here, whether further proof was necessary — contends that it is incumbent on the Pltff to shew that he lived within the Province, as the affidavit filed by Defendt. throws presumption against him — Cole. v. Church. decided last term — no other proof necessary —

Ogden for Pltff. Defendt. ought to have ~~broad~~made proof of Pltff being out of the Province, ~~is~~ conformity to the Interlocutory order of the Court. —

Judt. 6th —

Friday 5th June 1812

Oviatt & Mears — On Pltf's mo. to fix cause for ex. of Writ on first Writ. day in Term.—

Ogden for Defendt — objects, that Pltf has been negligent, & ought to have given 14 days notice —

Barlow & Dunlop — Action of Revendication —

Stuart for Pltf. claims the property sized as his — Both claim from the same vendors — Pltf. obtained the Cullers bill by the Sellers & pd them the amount. his title preferable to that of Defendt —

Ross for Defendt — contends that he was the prior Purchaser & has the delivery —

Stuart for Pltf — contends for a prior title in Pltf.

Chapman & Mayor & Rowley & McAllaster Opps — On oppos. of Rowley. affi de consomer —

Beaubien for Oppts. claims money due for board & lodging of Defdt —

Ogden for Pltfs contends that Rowley alone

Roi
vs
Johnson.

Action for damages on breach of Covenant

Sullivan for Defts. pleads fin exceps. to Plffs action, that two were bound by the Contract, & the action brot. agt. one only, without alledging any non-performance by the other party, who may have fulfilled the Contract —

Papineau for Plff. The Defts. was solidairement bound with the other party in the deed, & the plff had an action agt. either of them, the act of performance of the other if of any avail to Defendt. shd. have been set up by him — Law. 3. tit. 3. Oblig. Nos 261. 2. 3. 10 & 13. —

Newcomb

Storrs
vs
Jeremy.

On action for assault
Trial before a Special Jury. —

Verdict. —

In this Case the Defendt. set up an Incidental demand for damages for an assault & battery committed on them by the Defendt. upon wh. issue was taken & tried by the Jury —

Saturday 6 June 1812

Wilson
v
Smithdeal

✓ Security for costs ordered on affidavit produced without other proof

Butterfield
Munn
& Contra

Report how. of 2 Experts —

Cartier
Cheval
& Grise oppt

order for proof

M'Dougall
v
Henrick

On rule to shew Cause granted —
Service at last domicile held sufficient. — The Court cannot revise its Judgt after time for appeal is lapsed —

Roi
v
Johnson

Deft's plea in bar over-ruled — to plead over as other parts of plea —

M'Lean
v
Ermatinger
& Deperé

On Pltff's mo. for trial by Jury —
Ross for Defdt — objects to mo. the action being for the illegal seizure and detention of timber belonging to Pltff
Stuart for Pltff. Decl'n states a personal wrong done to him to his credit & character as a merchant — upon wh. he is entitled to a trial by Jury — Fleming & Grant. vs Blackwood — April 1807.

Busby & Woolman Ex & Ross Garnishee

On attachment under Judgt—

Davidson for Defdt. says, that Pltff cannot obtain deliverance of the monies in the hands of the Garnishee as he holds the monies as Exor of Winkleforss, and is liable to pay same under an act rendered by him at the suit of Madame Lacasse in this Court—

Judgt. 20 Oct. 1812

Wednesday 10th June 1812

Frenele v Stevens } mo. to amend rejected — the evidence having been made To the motion

Mc Lean vs Ermatinger } mo. for trial by Jury rejected —

Turner tal Lamontagne } mo. rejected — suffr. notice not having been given of the 14 days under rules of practice —

Blackwood Ld McLaren } mo. rejected — too late for hearing Writ.

Oviatt v Mears — } same Judt —

Noel v Marmier } ~~Mo~~ granted for 12th

Chalefoux v Marotte } Possession of £10 — granted to Plff

King v Storrs } action for penalty on St 36. Geo. ch. 7. Lords in Council — for concealing goods imported into this Province

and not entering them at the Custom house —

Sol. Gen.l for Crown asks Judgt. on the Evidence adduced

Stuart for Defdt. animadverts strongly on the want of ground for the prosecution contends that there is no proof to support it —

Sol. G. in reply — proof that goods were imported, the kind of goods not spoken to, as the inside of the boxes had not been seen — but Defdt. ought to have shewn what they contained to exonerate him —

—

Lacasse vs. Busby et al. } On Report of practicians. —

Sol. Gen.l for Pliff moves for hom. of Report, & that Experts be named to ascertain the value of real property —

Stuart on same side says, value of propty. ought to be estimated as it was at the time of decease of Winkleplass —

Ross for Defendts. The improvements made by W — after purchasing the real Estate should be considered

Joubert
vs
Jones.

Judgt. 20th ap. 1812
Ca. da. 9th May —
Return 15th. " —
Bail call. on to deliver
the body of Dft. 9th May
Sumns. issd out 20th
Serv. the — 22d May

action on bail bond. —

Sol. Genl. for Defdt — The action is premature — being instituted 29 days after Judgt. in the original action whereas the bail have one months after Judgt. to deliver up the principal and liberate themselves —

Lavoix for Plff — The Plff sued out Expon. upon 9th a return of Non est inv. was returned from 9th moment a right of action accrued to Dfts —

Raymond
&
Lefevre

action to compel Defnds. to give up poss. of a house —

Order for proof. —

Croisiere
&
Croisiere
&
Interessés

On P. Verbal regulating a Cour d'eau —

Bedard for Bender Attys of Plff asks hom. of Report. —
that opposts pay costs of last visit —

Vigé for 28 of Interessés, oppose P. Verbal — dont.

Collins
&
Georgen

On rule Nisi, for new Expon. of a Vend. Exps. —

Dfts. says. goods seized at suit of another, & cannot be sold by such writ —

Douglass
vs
Momenil
&
Govt
Inter[s]

Action Petitoire —

J. Ga[l] for Inter[s] Party. On question of delay to call in heirs of Sanguinet under q[a] Inter[s] party claims title —

Stuart for Pltff. Inter[s] Party has no right to call in a Garant unless his claim as set up be contested —

Thursday 15th June 1812 —

Douglass
vs
Momeny

✓ mo. granted —

Collins
vs
Georgen

~~It appearing that~~

Soubert
vs
Jones —

✓ Exceptions over-ruled

Johnson
tut[r]
vs
Sebert —

on Defend[rs] mo. for a serment supletoire being referred to him —

Ogden objects, that the Court has over-ruled the incidental demand of Defd[rs] & cannot be admitted to make any proof thereon —

Rolland for Defd[rs] — The proof adduced shews the bien question to have been advanced to the partnership —

Jordan
Lacroix
Simoges
Tuyron

On question touching right of Pltff to be collocated for the whole of his debt on the moveable property of Defts for a mortgage debt, after having rec.d part of it.—

McLean
Ermatinger

On Pltff.s mo for hearing for want of a plea—

Defts objected, that the Pltff. mo. for trial by Jury was overuled only yesterday, & the mo. is premature—

The Pltff says, that cause was returned into Court on the first inst. & the rules to plead are peremptory unless something in them can extend them in case of a motion such as that made by Pltff for trial by Jury. which is not the Case, & the party ought to have obtained a delay from the Court to be entitled to pple a plea after the three days—

Mo. overuled — The Court being of opinion that any mo. that tended to stop or prevent the regular proceedings in the Cause, gave a delay to the parties — that as a contest had arisen touching the right of Pltff to a trial by Jury, the party could not be held to pple his plea until it should be ascertained whether the conclusions of that plea should be made to the Court or to the Country —

Desriviers
vs
Hatt

On Defendants mo. to suppress the Pltffs answers to the fait Articles, as having been taken in private out of the presence of the parties. —

Stuart for Defendant, contends that the rule of Practice is contrary to the Statute Law of the land — ord.ce 1785.

The Court over-ruled the motion —

Burnside ~ Chaubert. & Sarrault opp.ts

On opposition of Sarrault afin d'empecher la vente —

Bedard for Oppt. cites Poth. Cr. Proc. p. 238 — a privileged Creditor can preclude a later Creditor to sell the property upon which he has a privilege — Sarrault as Curator to absentees has a prior claim upon the property seized, & objects to the sale thereof unless security for the privilege be given —

Boston for Pltff. such principle wd preclude the paymt of all debts subrogt. to mortgage, destructive of Commerce & right —

Laporte vs Larose

Action for work and labor —

Beaubien for Defdt. The work undertaken by Pltff has not been sufficiently done, nor has all the work be done —

Derrers vs Forbes.

action en garantie simple, to be reimbursed in certain monies pd. by Pltff. to A. McDonald —

M. Viger for Pltff. Pltff. sold a land to Defendt. on condition of paying certain sum of money to one McDonald, which he did not do, and

Pltff. was bound to pay it —

Stuart for Defdt. The Covenant was made to Pltff. & his wife, & the action by Pltff alone — There may be no community between them, — & perhaps they may have been separated — Whether both Pltff. have joined in the action — or Pltff have stated that he had the rights of his wife & was entitled to exercise them. By deed of Sale Pltff bound to furnish old title deeds of the land sold, & he has not done — & in consequence of this Defdt. made a protest against Pltff long before the institution of the present action & therefore Pltff ought to pay Costs —

Berger for Pltff. The husband is in law presumed to have a Comty with his wife — The title offered upon which Pltff. acted by the Plea, & filed with the replication — the Defendt ought to have made [illegible] of the money they owed —

—

Stuart
Buchanan

Action for negligence as a Carrier —

Stuart for Pltff — Defendt. not actually the Carter, but undertook to carry the puncheon from in question to Lachine, & employed another person by whose conduct the puncheon was lost —

Ross for Defdt. Defendt. not liable, & no proof of his.

—

Verina.
v.
Laberge } Action en Separation de Corps & de biens

Bedard for Defdt, pleads for exception, that Pltff, at the time of commencing this action & since has lived in same house with her husband of. presumes an intelligence & good understanding between them, which is a bar to the action — Poth. Com. Mar. Nos. 518. 519. & 520. in such case the wife should withdraw from the same habitation during the suit —

Sol. Genl. It was no necessary for the preservation of the property that she shd remain w. her husband —

518. 4 "

—

The King
v.
Délery — } on motion for a Certiorari to remove a Judt. of homologation of a P.V. in the Court of Qr. Sessions establishing a turnpike road —

Rolland — P. Verbal is without date — has no plan annexed as the Statute requires —

Gale. for Justin. by act. 48. G. 3. ch. 33, road laid out — Court has no Jurisdiction in this Case — a new Jurisdiction which cannot be extended has been created, Cowp Rep. 525 —

1 Lev. 14. — 1 Burr. 543 —

Party w. two Sureties must enter into Recog.

4. T. Rep. 281 — a Plan dis accompany the P.V. —

Saturday 13th June 1812...

The King v. Delery et al. } The mo. for Certiorari granted...

Monday 15th June 1812

Storrow } Mo. to enter appr. for Defd. — that action be dismissed for want of proceedings. — Ans. that two defaults have been ent. ag. Defd. & no appearance can be made for him — that Pltff not in default, the delay complained of accounted for under affidavit filed by him —

Desrivieres v. Watt — } Action by Pltff as Tutor, of Minors Robertson ag. Defd as one of the partners of John M'Kay & Co —

Stuart for Defd — No proof that the children of Pltff represents are heirs — no proof of marriage of late Alexr Robertson — This proof necessary under the general Issue — No proof of the death of the late Alexr Robertson — No evidence of an assignment by the widow of the late Alexr Robertson of her rights in the Community w.h her late husband to the Pltff — the

No proof of the debt demanded by Pltff — bill of particulars &c. have been produced & proof made of the delivery of the articles — Evidence of Portions — & Petition, shews no delivery of the goods — but speaks in general terms without knowledge of the fact —

The books of Ant. no evidence — not produced nor proved ~~by Stay proof~~ — No proof of the entries of the bills of parcels in the waste book by the Clerk — Ev. Poth. ob. 2. Vol. p. 290 on the Case of evidence by act of a third person — The answers given by Defdt. on fact & articles must not be divided, & by them the acknowledgment of Deft. may have made of the existence of a debt is done away by his saying the debt was paid — The remittances made by Jno McKay to extinguish the debt he owed to Alexr & Jas R. particularly as at the time of these remittances Deft. was a partner of Js McKay — Defdt has pleaded Stat. of limitation to Pltffs action agreeable to Law of England, of he contends to have been introduced into this Province in Commercial Cases — When a contract is made in one Province to receive effect in another, the law of the Province where the contract is to take effect must govern the case. Poth. Ob. No. 512. or the law of the domicil of the Defendt — cites. 2 Ben. Robertson — Bland 1077 — The Law of England not to be in U. Canada — —

512

There was a novation of the debt under an Obligation taken by late P. Robertson from Jno McKay then Partner of Defendt — under a communication to Deft — by Law all simple Contract debts are destroyed by a bond given for the same debt —

That Pltff does not negative his assent to late P. Robertson's acts as managing the Concerns of late firm of A. & J. Robertson

Ross. in reply. The exceptions to the right of action by the Pltff in his capacity of Tutor, have been already been decided — That such points of exception ought to have been specially pleaded contradictes by Defts own plea. who states a marriage à la Community between late Alexr. Robertson & the widow whose right he says in that Community have not been assigned to the Pltff. — Says there is proof of the debt — That the law when the Contract was made must govern the case — P. Robertson was no partner wt late Alexr Robertson nor could he give any receipt for the debts due to the partnership of Alexr. & Jas Robertson —

—

Drake vs Gourdeau } Action on Judt. in Upper Canada —

Rolland for Defts. the exemplification of the Judt. is incorrect, being stated to be in the K. B. & certified by the Clk of the Court of K B —

—

Jos.te Dumont vs Jn Bte Roquet } action of damages for keeping a vicious dog accustomed to bite, who bit the Pltff.

Fr. Bousquet was brot. up as a Witness to prove the ~~Defendt~~ acknowledgment of the Defendt. that his dog had bit the Pltff - Objected by Defts. counsel that such acknowledgment cannot be admitted the damages being above 100 livres - over-ruled —

Dubreuil.

Verdict for Pltff £50 - & Costs —

Piedalu
vs
Terrien

Action on a deed of Sale.—

Mr. Vigé for Defdt. The land was in arrears to the Seignior a certain sum of money, which he deducted from the amount of the present demand, & tendered the balance— of wch he prays to make proof.—

Sol. Genl— Defdt. had no right to pay any monies on act of Pltff without his participation, & as there is still in the hands of the Defr. a large sum of money beyond that now demanded, more than suffr. to answer the claim he now sets up.

Vigé in reply, he is entitled to be reimbursed the money he was obliged to pay on act of the pltff to the Seigr—

—

Dumas.
vs
Burton

Action on Obligation.—

Sol. Genl for Defdt— The certificate given by under the Com. Roga is not sufficient proof of the marriage—

Beaubien— The certificate of the birth of the Pltff child signed by the father & mother, gives that child a certain name and rank in life wch cannot be destroyed by the Defdt

Bouvier— tit. 20. art. 10—

Tuesday 16th June 1812.

Goodell v. Barlow

Writ were exd. by Pltff on 12th. when he moved to ex. Defdt. on 13th. on facts & art. – on the 13th – a further day was given to Defendt for ex. on the 15th – On the 16th the Pltff moved to fix cause for trial on merits – Objected by Defendt. that he had no opportunity of exam's his writ & was not put in default by any entry on the Diary calling him to produce his writ. –

The Court seemed inclined to think that such entry to put a party in default was not necessary, that the day being given to the parties to make their proofs, their not proceeding is a suffe default without any entry to that effect –

Bellows v. Henshaw

On Pltff mo. for Ca. Sa. –

Sol. Genl. states for Defendt – that he has lands & produces a deed of one – that a discussion has not been made of his property & therefore there can be no Ca. Sa. granted –

Commr ordered –

Mounsey v. Cogswell

The Court permitted cause to be heard, & that the amendment made under the order of the Court was known to the Defdt. & at the time

Stuart for Defdt. no proof of the execution of the deed on wh. the action is instituted – The person signing the Deed Edmd Henry not rendering it authentic, he not appearing to have acted in his pub. capacity

Stanley v. Poser — Action for damages on desertion of an apprentice who had been bound to him by Deft.

L. M. Vigé. The apprentice enlisted in the Kings Service, and Plff used no means to redeem him from that situation — No person is garant of the fait du prince. As to damages — little ought to be given, as boy was stupid & no workman.

Stuart The fait du Prince not applicable —

Vigé in reply. Defend. is only a Caution, & cannot be held for more than the apprentice —

Wilson v. Peerless — Action on special assumpsit — & damages for not fulfilling a contract —

Sol. Gen. for Defts — objects to certain exhibits filed with Plffs replication, as ought to have been filed with the Decln — moves that they be rejected —

It was in the agreement between the parties that Plff sh. from time to time furnish certain bills of Exch. to assist them — these bills were returned protested — By failure to supply the necessary monies, the Defts were bound to postpone the work

Stuart for Plff. The Defts. agreed to take the bills, & upon their return protested, they were entitled to £10 p.c. damages besides interest —

Damages demanded consist of money advanced, & the gain of the Plffs wd have made had the Ship been delivered at time stipulated

Blackwood
Lal[t]. vs
M[t] Laren

Obl. No 248

Action on a Security bond to the Sheriff –

Stuart for Defend[t] – claims amount of the penalty, there being no evidence to shew that it can be diminished

Ross. for Defp[ff] – says they are not bound to adduce testimony –

—

Villeneuve
S[t] Julien

On Evocation –

The action for cotte part of reparation for erecting a bridge –

Beuray – The rights in future are not bound

—

Stevens
Millar

Action for house rent – prays that fait & aveu may be taken as confessed –

—

Hanna
Jackson

action on deed of Sale –

Ross for Plff moves for Jud[t] –

Cause cont[d] till to morrow

—

Davis
Perrault

Action on Sale of timber –

Sullivan for Defend[t] sets up an hind[t]. demand

Wagener
vs
Seasdale

action on deed of Sale –

Ogden for Defdt contends, that Cause is now heard only upon a point of law and not on the merits – The Defendt cannot be bound to pay before Pltff has paid or given security for the payment of a mortgage of £200 & ~~Defendants~~ Pltff owes to this persons. –

Donegani
vs
Normandeau
&
Dupéré. Garb

Action Petitoire –

Ross for Pltff – the Defts. purchase – extends to the fortifications, which is the inner wall

Bedard for the garants, says that the Defendts title cannot be extended beyond the inner wall of the Fortifications

Stuart for Defdt – The Defendt was in possession under his title before Pltff who never had any possession thereof & title without possession is insufficient, & Pltff. do not even allege that sale to them was followed by possession
Poth. Prop. 286. Rep. vo Revendication –
Dijé cites case Norman v Cherrier Fev. '97

Chapman
Pelerin } Action on Promissy Note —

Gale for Plff prays Judt. on evidence adduced

—

Prevost
v
Paré. } Action petitoire. —

Bedard for Plff asks Judt.

Lacroix for Defendt. Plff does not prove his capl. of Paré. That Defendt. ought to be upheld in his poss. during his lifetime —

—

Turgeon exp
Laurin } Action for arrears of rents & pension. —

Lacroix for Plff asks for Judt on evidence adduced. —

—

Provost
Plouffe } Action for arrears of rents & pension

Lacroix offers to submit case to Arbitrators — opposed by Vigé —

—

Lacombe
Gibb — } Action on obligation to deliver asks to Plff —

Ross for Plff asks Judt. on evidence adduced. —

—

Caron dit
Papineau } Action for share of prospection.

L. M. Vigé for Defendt. says, that all the objects in contest are not of sufficient value to be cognizable by this Court — Offers to pay them in kind.

Bedard for Pltff. asks Judt. for the value of the articles —

Toupin
Shonets } Action for arrears of rents & pension —

Stuart for Defendt. Nothing shows in what manner the Defendt. is personally bound, as the original Contract was made between Pltff & one Mondion — The Defendt being in the possession of the property does not give but a hypothecary action against him for the pension in question —

Scott
Decarry } Action to recover damages for cutting wood on Pltff lands. — To see report of Expert

Raymond
Lefevre — } Action to compel Defendt. to quit a certain house —

Pltff purchased house from Pinsonneau from whom the Defendt. leased, & has a right to enter upon & house when he means to live in it himself — besides Defendt had sufficient notice of 3 months & upwards to leave house —

336

Pothr. Louage. nr. 336. —

Sol. Genl. for Defts. The action is of Pltff.

Bricault
~
Bricault

Action for arrears of rente & pension —

Boston for Pliff. The principal object in contest is respects 3 or 400 livres for the wages of a Servant girl —

Bidard for Defd. says proof is insuffe. to support the demand

Wednesday 17th June. 1812.

Whiteside.
~
Douglass.

Pliffs. mo. to set down Cause ex parte for want of a plea. Defendt. took off default on 5th. & on 8th asked security for Costs — on 10th. Pliff moved to set down Cause ex parte. — Defendt. insisted that he had 4 days from entry of appearce Court determined that the security for costs must be asked for within 4 days from the entry of the action — & therefore granted the Pliffs motion. —

King
~
Delery

On Certiorari.

Moved on the part of certain opposants to the hom. of the said P.V. before the Dr Sessions, by certain Inhabitants of Biloil who complain that they are overcharged by an unnecessary labor in making a bridge larger than requisite two setts of Opposts — 1st Those who heretofore used & were bound

to

to make the bridge, which they are willing to make in the usual manner, & 2dly the Inhabitants of another Concession who are called in to assist the Inhabitants formerly bound to make the bridge.—

The grounds of Appeal in the P. V. are. 1st That no sufficient notice was given by the Gr. Voyer of the Petition referred to him for making the bridge in question, or of the day of meeting of the Interessés, nor any proof made of the publication of any order to this effect.— Upon this objection made before the 2d Sessions, the Court refused to admit any other evidence beyond the allegation of the Gr. Voyer himself — according to his own statement, there were not two days notice between the publication of the order & the time of meeting — the order was published on the 21st and the meeting held on the 23d — whereas in legal computation of time the day in which the notice was given ought not to be included — & the law says, that two days notice, at least, must be given —

Lacroix for Gr. voyer. The Gr. Voyer is the only competent Judge to determine upon the expediency of the work to be done — The publication of the Petition appears to have been made by the statement of the Gr. Voyer in his P. V. which is sufficient, his certificate of that fact is enough. The delay given was agreeable to law.

Genus
vs
Lacisserayes

Action of account.—

Papineau for Pltff — action as Defend. as being in the possession of the property of their late Mother, whose wife she was.

Rolland for Defts — The Defend. is called upon to answer to two different setts of Plaintiffs, for two different objects, in as they have not a common Interest.—

Jones
vs
Peabody

Action on a promissy Note. — settled

Dugas et al
vs
Prevost

On report of practiciens —

Bedard for Pltff. objects to the report — it states that 12 50 acres of land were conceded after the act of repartition, whereas they were conceded before + ought therefore to contribute towards the building of the Church in question.— The Recette ought therefore to be augmented in this respect.—

The Practiciens allow all the disbursements + expenses of the Defend? including the expenses of the present Suit.—

Declaire
vs
Desgranges

Action on obligation for certain articles of rente + pension

M. Vigé for Pltff. asks Judt. on evidence adduced.—

Bedard for Defd. says, that he is not bound to pay any rente & pension to the Pliff. but only to board him in his house.

Baulnes vs Féré. } To settle whether case ought not to be submitted to Experts. –

Guy vs Fawley. } On report of Arbitrators – Judt. for Defr

Roi. vs Johnson } Damages for the non-delivery of wood.

Defendt alleges that the elements prevented the delivery of the wood. –

Papineau for Pliff. the agreement between the parties says, that the Defendt. shall deliver the wood in question unless prevented by the elements, now to be settled whether the facts pleaded by him can be referred to this excuse alleges that his Mill was carried off by the water, & prevented him from preparing the wood, but as the mill was not the object of the agreement, this can be no excuse

Rollens
vs
Sanguinet

on bill of Ex.

Ross for Defdt. objects to the regularity of the protest. —

Joubert
vs
Jones et al

Action on Bail bond

Sol. Gen. for Defdt. There is no evidence to support action
The 31 days for surrender of the principal had not expired
when action was instituted. —

Lehoulier
vs Dezery
Sanguinet

Action on

Ross for Defdt - No proof that Plff is the Sister of the
widow of the late Sanguinet - extrait de baptême not alone
constitute proof of marriage of the father & mother. —
Ex hib. No 6. shews, that Dr Sanguinet is one of Cath. Chenevilles

---

Burton
vs
Derome

Contr Intervs.

action of revendication. —

Doucet for Plff says, that Intervs. party has no right
to the wood in question. —

Stuart for Interv^{s} Party.– contends that he is the prop^{r} of the timber in question – q^{e} is shewn by the evidence.– The bill of sale produced by Pltff shews it, the evidence given by the Wit^{s} cannot be admitted to gainsay the purport of it – 1 Ev. Potts. p. 504. N^{o} 758. 2^{o} d^{o} p. 203. This is in proof that the pltff sold the whole of the timber to Bostwick, & assisted him as a labourer to draw it from the woods to the water's edge –

Hanna
v^{s}
Jackson.

Action on deed of sale. cer

Thursday 18th June 1812

Bedard
v^{s}
Archambault

Def^{t} Pltff. mo. to put off trial.–

Def^{t} objects, that no suff^{t} reason given for putting off the trial, & therefore he is entitled to a Non-Suit

697. 1^{s}

2. Tidd. 697. 699. –

The King.
v^{s}
De Salaberry

Mr Bolland on behalf of Mr De Salaberry, states that he had no knowledge of the Stat. Cor. it having been left with another person, one Hesse, who as yet has

no commission in the Corps –

Sullivan for Petr – Herse who opposed the execution of the Writ is liable to an attachment –

~~Rule discharged~~ – Motion rejected –

Bradford
vs
Lincoln

mo. for enquete – objetes want of 14 days notice –

Dow
vs
Taylor
Taylor oppt

Pltff moves that oppn be dismissed with Costs as no proof has been made –

On Petition –
of Wm Hallowell

Parties consent to a Judgt –

Pourrier
vs
Dupéré

action en Separation de corps & de biens –

Quesnel for Pltff. states that the evidence is suffte to obtain the conclusions of his demande. 2. Pigeau. 205. Husband leavs. his wife without subsistence or suffte cause – it is a grounds of Sepn –

Bedard for Deft. says, that Pltff ought to have gone to her husband who resided at Quebec –

Sanford.
vs
Lamontagne

On Report of Arbitrators –

Rolland for Deft – Report irreg. – does not mention that the

the parties were heard, nor on what day they operated —

—

Brackenridge v Stewart. } On ~~Pltff.~~ Defts. mo. why cause shd. not be dismissed for want of Security for Costs —

Sullivan for Pltff, admits fact, but prays a further day owing to the absence of the agent —

—

Derrick v Jewell } On Obligation —

Davidson for Defts. says, that he has made suffc. proof of the assignmt. by the Pltff to and. person for valuable consideration, —

554. 8. Vents

Georgen for Pltff. says, there was never any transfer of the obligation signified to the Defts — Wherefore Pltffs. must a suffc. discharge — see Vents. Nos 554. 558. —

—

Goodsell v Barlow } On Promissory Note & Acct

Trestler
vs
Sauvé

On Obligation for wheat transferred to Pluff by one D'Aout

Stewart for Defdt – no proof of the marriage of Defendt with the widow of the late – the one being named Therese, & the other as alledged is called Marguerite –

Bedard for Pluff. Defendt sued as detenteurs of the property mortgaged for the payment of the wheat –

Collins
vs
Georgeu
vs
Duplessis

On pleff. mo. for a recid. exp.

Pluff – Exon. ret. by Sheriff, that he had seized certain goods already in his poss. under a Writ of attach. at the Suit of Duplessis for house rent –

M. Vigé. That on behalf of Duplessis he has sued out Exon upon his Judt. for house rent, under which the goods effects seized will be sold, giving privileges to the Pluff. no second writ, ought to be granted to the pleff to sell the goods –

Beaubien for Defdt. says, that the 2d Seizure by the Sheriff is illegal, & therefor no writ of Recd. Exp. can be granted thereon.

Stuart for Pluff says, that the addition in the Sheriffs return reputing Duplessis's attachment is wholly irregular ought to be considered as surplusage – 346. 7. 8. Proc. Cw.

and that no proof thereon was necessary, unless something had been added to impeach the veracity of that report – such as affidavit

Bedard vs Archambault } Pltff. mo. for another day for trial, granted upon his affidavit.

Donegani vs Wallace & Holtzal'pltt } Gale for opptt contends that Pltff is entitled only to his cost on his execution, but not the costs of his Suit. – 1 Pig. p. 687. – Rep. de Jur. vo Contribution – Poth. Proc. Civ. 1 Vol. p. 353. –

Rolland for Pltff insists upon the practice of the Court. that costs of the suit are always allowed to the prosecuting Creditor, as without a Suit & execution no legal sale can be had, –

Needham vs Burton – } Geo. for Deft. moved that Cap. shd be quashed, inasmuchas no affidavit has been made to support it – No true copy of decr. served – The sum sworn to being only £200 – the sum in the writ being £600 –

Stuart for Pltff – This is no suffit. cause to quash the writ

Saturday 20 June 1812

Beaujeu ~ Chatel { Judt of Reunion

M'Kenzie ~ Archambault { Judt

Raymond ~ Lefevre { Judt — heard 16th —

Dumas ~ Burton { Judt on oblgn —

Jemus ~ Lacasserege { Exception of a demand by 2 Defts parties dismissed — Leden that Defts account —

Little ~ Berry { Petition for a revisal of Judt — overruled — heard 16th Apl. 1812

M'Gill ~ Burton & Intervs party { Interlocutor —

Busby ~ Woolman & Ross Intervs { Interlocutor order

Villeneuve ~ St Julien { Evocation admitted —

Dezeny
v.
Sargeant — Judgt —

Noel
v.
Marmion — Judgt —

Scott
v.
Dezeny — P.V. of 2 Experts hom. & costs under £30 —

Demers
D. Aff. v. Forbes — Judgt — & from the nature of plea without tender costs given against them —

Burnside
v.
Sarrault.
&
Sarrault
Oppt — The opposition to arrest the Sale by Oppost — as Prior Creditor dismissed

Blackwood
& al —
v.
McLaren — Order to Experts to ascertain value of Staves

Cause heard 8th April
Interlocr — 20.
Judgt on mo. 10 June —
Cause heard 16. —

Stanley
v.
Poser — Judgt for £15 — 0 am — The party for whom the warranty was made was not an apprentice within the meaning act, so as to come within the period of time reqd by that act — therefore Plff bound bound to give no notice to Deft of his desertion —

Mc Millan
v.
Finckley — Deft. movd to be discht from confinemt. for non payt of weekly allowce —
Plff — money was tendd by Gavin about 12 o'Clock on Monday —
Stuart as Counsel contends that Court had not power to make such a rule of practice as stated

Toupin
vs
Shoultz

Decl. states that by deed executed before Gabriel Notary Pub. the 4 Nov. 1796, the Plff & his wife made a Donation to Jos. Mondion & his wife of a certain lot of land, on the condition with the burden of paying a certain rente & pension viagere, which the Defts as being in the possession thereof had for 5 years past paid to the Plff. one half on the 24 Dec. & the other half on the course of the month of April of every year — That there is now in arrear of the said rente & pension + amounting to the value & amount of £53. 18. 6 for which Instt is demanded —

+ from 24 Dec 1810 to 24 April 1812

Plea — Nil debet — & Issue thereon —

It was proved by 2 Witn. that the Defend. had been in the possession of the land for 5 years. —

June 16 — Defend. contended that he was not personally bound, but only bound by action hypothecaire to pay Plff —

Lacroix for Plff — Defend. is personally bound, the arrears demanded having become due during the poss. & enjoyment of the land by the Deft —

Poth. Traité de Cont. Bail a Rente No. 90 — 2 Vol. p. 490 —

20 Instt for Plff —

By Instt in Appeal 20 Janv, 1813. the Instt reversed upon the principle that this was a rente Constituée, which did not attach upon the property so as to constitute a charge reelle, which is contemplated by the 99th art. Cont — This art. seems to apply only to charges reelles, but not to a rente carrying hypotheque on the land —

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