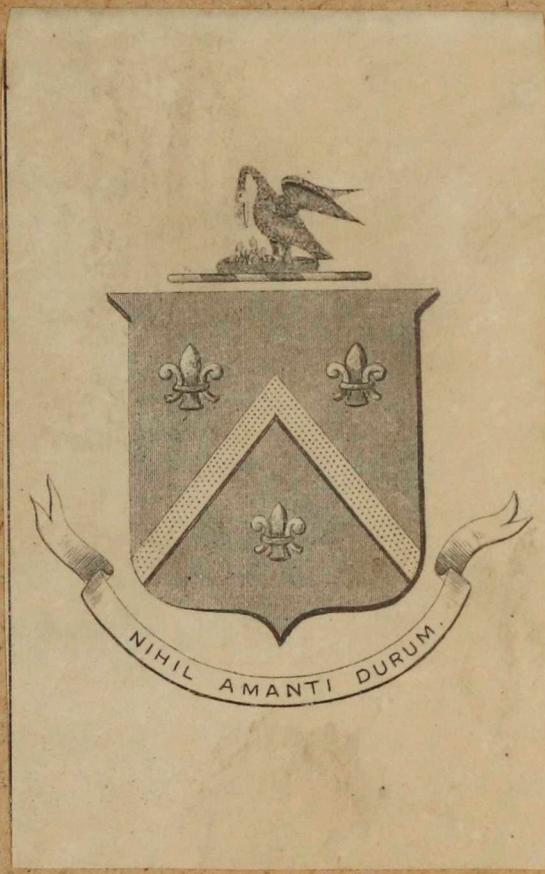


Kings Bench Montreal.
16.8
Civil Pleas.

October Term. 1812.
February Term. 1813.
April Term "
June Term "



3

October Term. 1812.

Thursday 1st October 1812.

The chief Justice and Judge Ogden absent

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

Friday 2^d Oct. 1812.

Poutrel { Action petit orie.
Decouagne }

Sol. Gen: for Plff. The Defd. pleads title to land under a promise to sell from Plff ~~sous seing privé~~, and by St. 48 Geo. ch. 34. s. 4. this is not valid and cannot be proved as to the St. 52. Geo. chs. regards all acts to be made in future.

Iacroix for Dfd. The writing in question is only a Receipt for the payt. of part of the consideration money of the lot of land in question - was such was allowed to be proved as not coming within the St. 48. Geo. - That late act of 52 Geo. 3. renders all acts as well passed before as after the date thereof being ~~sous seing privé~~, valid.

Verina.
Labege } On Rule Nisi - why process sh? not be quashed

Bedard for Dfd. moves to quash Saisie Gagrie sued out by the plff, who sues in separation, and upon her affidavit that the Defend^t her husband was about to conceal his effects. That Plff has no right to such Saisie - she has no property in the Comm^t until Judge determining, & he cannot say that Defend^t is indebted to her in £10 as reqd. by law.

Sol. Genl. for Plff., 2 Regan. 184. the right of Plff is warranted to have a Saisie Gagrie. the present, is the second attachment the Dfd. having made no objections to the first. -

Bedard - Saisie Gagrie cannot be allowed but for rents of house or of a farm -

Valois.
Huot. } On mo. to quash writ of Sum^t -

Ross for Dfd. states that process was not served 28 hours before the return -

Papineau for Plff. the process was served on 29 Sept^t before 10 o'clock in the morn^s. at 1st inst. which is sufficient -

The Crier of the Court, the person who served the process, was examined who s^t that the writ was served at the post office on 29th Sept^t and a day was given to Dfd. to adduce wit^t. to contradict the report of the Officer

Saturday 3^d October 1812.

Roi
Johnson -

Plff. moved for trial on 10th

Def^t. moved for extension of rule for return of Com. Roger
as it had been deliv^r. by the Clerk of the Commissioners, to the person
who bro^t. it to this Court, & Def^t. was therupon under necessity
of returning it to the Com. with new instructions, —

Plff. ate. Stanley. v. Poser. where this was refused owing to
delay on the part of Def^t. to sue out his Com. to obtain a return.
Objects to sufficiency of the affidavit produced by Def^t.

Def^t. ate. Case of Cameron. v. Baker, when a similar application made
by Def^t. and granted —

Monday 5th October 1812

Roi.
Johnson -

The Court under the circumstances stated in the
Defend^t. affidavit, extended the return of the Com.
Roger to the 10th inst. —

Dunlop
Roi. —

Def^t. moved to quash writ of sum^e because it is
partly in french, partly in English, & not in the one
or other language as required by law. — The writ is in french
except the addition of Defendant which is in English, in these
words, "of Montreal in the said district, Merchant." —

The Court permitted to amend without payment of costs.

Hart. Sal' }
Deaggrave } Urge for Defend. moved that writ be quashed in
as much as in the declaration he is stated to be of the
parish of St. Mathias, and in the writ he is stated to be
of the parish of St. Mathew. —

The Court granted leave to amend upon payment of
Costs. —

Dufresne }
Logie. } The Defend. moved to quash writ because the name of
the appearance is not mentioned in it. —

Trew }
Gilman }
Sal' - } Ross for Defd. moved for delay to plead - Cause stated
to be on a Suit rendered in State of Vermont until
he obtain papers & vouchers to rebut the demand from
Vermont - demands time until ~~first~~ day of next Term
under circumstances to produce those Papers -

Ogden for Plff. - The affidavit is insufficient as it
is not stated what the nature of the papers to be produced
is, - as the Plff might admit them -

Ross in reply - It is impossible that Defendt can
swear positively to the nature of the papers -

Davis.

Hamiltons

Action on Special assumption. —

Stuart for Defd. The contract in question was made between Defendants and Plaintiff jointly with one Meers as a party thereto, & the suit is now instituted by Plaintiff alone. —
cite. Chitty on pleading. 1 vol. 5.7.

Ogden for Plaintiff. The Defendants have divided the contract by agreeing to share his proportion of the contract with a view to exclude Plaintiff from his right of benefit — therefore Plaintiff is entitled to his action for his individual right on the contract —

Stuart in reply — The money paid

Oldham

On action populaire. —

Dumont

Rolland for Defd. — The Plaintiff claims damages by this action, being an action populaire. —

1. Framerville 726

Ogden for Plaintiff. In case of Choses à faire. the conclusions were for damages — & damages adjudged —

Tuesday 6th Octr 1812.

Dufresne
Dagré.

The Court rejected the motion. —

Oldham.
Dumont.

The Court dismissed the exceptions, considering the action populaire to be an action de complainte in which conclusions for damages are always taken. —

Hart & Co
Delagrave

On Plff's motion for hearing on exception filed by Defend^t. instanter and states, that Defend^t. has pleaded same matter by plea which was determined yesterday upon motion — & further that matter now pleaded shd have been cont'd in notice

Vice for Defend^t. The matters pleaded are different namely, that Defend^t. does not live at St. Mathias, but in another place —

Wilson & al.
v
McDonnell

On motion for delay to plead

Motion for Plff. — The process was served on 20th June and delay is asked to obtain a day to get a paper out of a Notary's office at Quebec — the Defend^t. has been negligent as he has had sufficient time to obtain it —

Stuart — for Defend^t. states under affidavit that he had been delayed in obtaining the said paper

Defendt moves that Ca. ad res. be quashed in as much as
the affidavit upon which the same issued is insufficient
~~whereas~~ the cause of action is stated to be for two separate
objects, vost. money advanced on a Contract - and for the non
performance of that Contract - it does not appear what was
due for money advanced, nor what is demanded for damages
which is not a debt as reqd. by law - The words in the
affidavit, "without the benefit of a Capias", is not sufficient
the words of the ordinance are, without the benefit of a Capias
ad respondendum, or attachment agt. the body. -

Boston for Plff - The affidavit is sufficient - it specifies a
debt to be due to Plff - if it had been for damages alone, the
Judge by ordering the Capias to issue for the sum demanded.

Campbell.

Matherin.

On Defendt's motion for security for costs -

Parties agreed that Plff on last leased the house, of
which the rent is demanded by the present action, & last fall
went to England, that his affairs detained him there & he did
not return to this Country last spring as he was accustomed to do
in the carrying on his business. -

Georgan for Defd. cite cases of Cole v. Church, and Cole v.
Lelanne - where security for costs was ordered after the cause was
ready for trial, because the plff had after the commencement of
the action left the Province -

Widow Proudfont
or
Busby, Com. Sal

On report of practitioners. —

Mr Ross for the Ex'r. - submitted case to Court. —

Wednesday 7th Octo. 1812. —

Campbell. —

Mathurin. — ✓ mo. rejected —

Wilson Sal' ✓ The Court rejected motion for quashing writ from
McDonnell.

Davis ✓
Hamilton Sal' ✓ Ex'ps. dismissed.

Cameron
Baker

on mo. for publication of a Com. Reg^{ts}.

Agree for Defend. — The affidavit of person carrying the Com.
is written upon a loose cover enclosing another, which cannot
be taken to apply to any com. Reg^t. —

Boston for Plff. The cover was sealed & tied up when it
was delivered into the Office. —

Ordered that Plff do shew by affidavit the state of
paper when it was filed at Office —

The defenc^t afterwards consented to the publication —

Stew.
Chamberlain } On Pliff's mo. to amend without payt. of Costs -
vige for Defend^t. the Copy of the declaration served on
Defend^t. is not conformable to the Original, there being no
day or date of the delivery of the article, or of the undertaking
of the Defend^t. as stated in the Decln. -

Stuart for Pliff - This is an action of assumpsit, in which
the day is not material - the defect of ment^s it in the Copy -
cannot prejudice Defend^t as he must plead to the original -

Thursday 8th October 1812.

Hart & Co.
or
Delagrange ✓

The exception dismissed -

The court considering the service of the process upon the
Defend^t. personally as sufficient although made at
another parish than that mentioned in the writ & Declaration.

Trew.
Gilman. ✓

The motion for delay to plead rejected, the Court
rejecting the affidavit made by Defend^t as too general
and not containing ~~other~~ the nature of the defense to be
made or the papers requisite to support it -

Stew.
Chamberlain ✓

The Court granted motion, but upon payment of
Costs -

Friday 9th Oct. 1812.

Stenn
Chamberlain }

On rule Nisi, to reject Defendant's plea to irregularity
of the Copy of the declaration not being conformable

to the original. —

Stuart for Plaintiff states that this insufficiency should have
been stated by motion under rules. See. 26. p. 43. —

Wrigg for Defendant answers, that the copy of declaration
does not come within rule. —

Bennig~~s~~
Robertson. }

On rule Nisi to reject Defendant's plea from Record
as being irregular and inconsistent —

Stuart for Plaintiff - The action is in assumpsit, the Defendant
has pleaded, non assumpsit — and also that he does owe
Plaintiff but that he uses a set-off to make thereto — and lastly
that there are no conclusions adapted to those pleas —
the pleas are contradictory — and the conclusions that action
be dismissed are improper in case of a set-off

Boston - The Plaintiff has not replied to Defendant's plea, and is
too late to object thereto under this rule —

Stuart - Plea of set-off, was a particular conclusion which
ought to have been adopted — to demand on it that the action be
dismissed, is not consistent with that plea —

Clarke & ux²
v.
Antill & al' { action to recover a legacy from Defendants as representants
Estate of the late Dr Blake the Testator -

Sol. Gen. for Plff. The legacy was given after the securing
a sum of £3000 to two minor children - this being already
secured, as appears by the admissions, the Pliffs are entitled
to their legacy - although the money is not yet payable to children
Rep. de Inst. vol. 10. the general meaning of Testator to be taken.
2 Peer Wms. - The Principle of substitution is considered as
the proprietor of the thing substituted. -

Ross for Defendants. The money secured to the children is to
be paid only at their age of majority, and the legacy to Mrs
Clarke is to be paid only after the payment to the children
clearly expressed. -

Campbell.
Mathewson. { action on Lease for rent. -

Defendt. vobt. a rule for Plff to shew cause why a certain
lease sh. not be ~~relinquished~~ ^{rejected from record unless} declared ~~for~~ void, unless Plff. declares what
he means to make use of it in the prosecution of the cause -

Wilkinson v. Ashby ap. 1811
Peltier v. Laramee ap. 1811 Ross for Plff. Defendt. atty. shews no power to demand
such a question, nor to obtain such rule -

George for Plff. The constant practice has been not to
require any power upon this motion, nor until an inscription
en faux be made - its case. Peltier v. Laramee, ap. 1811
and Wilkinson v. Ashby, ap. 1812. -

Sacoux

Paris

Robitaille

{ On Report of Experts. -

Boston for Paris. prays Judge ~~for~~ on the report. -

Stuart for Robitaille - offers the report of the 3^d Expert
and moves for Judge. thereon -

Boston. objects to the filing the s^o Report as being
too late and not filed at time when cause was set down
for hearing -

—

McKenzie et al

Beaubien et al

{ On rule obt. by Defend. to shew cause why Plaintiff should
not be exp. on facts last. - The Plaintiff moved for a day
for trial, saying that no. the Defendant obt. the rule
now in question, and had previously exp. some other of the
Plaintiff.

Saturday 10th Oct 1812.

Clarke. ~
McDowell. }

On Plff. motion for trial -

Defend. says he has pleaded an Incidental demand
and is entitled to a reply theron, without which the issue is
not complete - and besides the time for reply is not yet expired,
till which time the Plff cannot move the Cause -

Stuart for Plff. - The Plea to the Incidental demand forms
the issue - which in this case is a non-assumpit -

Paris. ~
Robitaille. }

on motion for enquête by Mr. White -

Granted -

Millar & Parlane
Paternaud. }

on motion for trial -

Objected, that issue is not complete - that Defend. is
liable to be called on for Military Purposes -

Lacroix
Paris. ~
Robitaille. }

The parties were heard upon the report of Mr. Panet
one of the Experts -

Boston for Paris - objected to the filing this report as
too late - objects to the insufficiency of the report -

Stuart for Robitaille - The Report of Panet is founded
upon evidence heard before the Expert - this evidence ought to be
brought before the Court -

Trew
Gelman.

} on Pltf. mo. for enquiry by Wts - on 13 for want of plea -
Ross for Defor. The Court ordered that Count over-ruled
his application for time to plead only on 8th & he has yet till
Monday to file his plea -

Ogden for Pltf. other time to plead was expired when Court
gave its Judg^t on the 8th - appⁿ on 1st on 3^d rule to show cause on 5th
& on 8th rule discharged -

W/All.
Russel
E & contra

} on action on a promissory note -

Stuart for Defend^t obj^t - that it does not appear
that the note was ever delivered by the Defend^t to
the Pltf - therefore Debt insufficient -

Ogden for Pltf - It is stated in Debt to have been delivered
Excep^t dismissed

Hart
Jones.

} Exception dismissed - Def^t abandoned the case

Monday 12th Oct. 1812.

Teasdale
McPherson } motion for enqueste granted.—

Jrew.
Griman } motion granted.— The Court were of opinion that the days which had elapsed before the application for an extension to plead ought to be reckoned agt. the Dfnd. and he ought to have no further time after the decision of the Court, than w^t. be sufficient to complete the time of 3 full days to g^t Dfnd. is entitled to file his plea

Clarke.
W Dowall } ✓ motion granted — The issue being complete by the plea to the incidental demand, no further delay ought to be granted for filing a application or similire, particularly under the rule of practice respecting incidental demands

Stein.
Chambalain } ✓ rule absolute —

Benny
Robison } ✓ rule discharge —

Cameron
Baker } Action of Trover & Conversion of certain quantity of timber —

Boston for Plff — moved for Judg^t on the evidence adduced —

Ogden for Dfnd^r objects to testimony of one Hare as an interested wit^t also to the paper produced by Hare —

Amesse — } action petition — 4 Islands called Isles Boiret.
Taillieu — }

Bedard for Plff. It is shown the property of Plff — the concession was made of 4 Islands to one Chartrand by one Barret, the agent of Seminary of Quebec — in 1770 Isles Boiret was adjudged to Mr Amesse, the father of Plff — according to extract of Deed of Concession in 1768. Taillieu had then afterwards had the poss. of some of the Islands, but not the Island in question under a purchase from Chartrand, who

Sacroix for Defd. The title of Plff. serves also to Defendant Chartrand the original grantee sold one half of Isles Boiret to the father of Defendant — Isle à la varre & Isle verte constitute by evidence the half so sold — sale two years before Decent of the Island, and the possession of the Defendant. His father continued ever since — Objects to testimony of Dumoulin & Vient as interests in the Cause —

Bedard in reply — The sale by Chartrand to Taillieu is prior to the adjudication, at which the totality of the Islands was sold to the Plff's father — and no oppos' was made to that sale —

The interest of Dumoulin and Vient is too remote to render them incompetent — The Defendant does not show that he is the heir of Mr Amesse —

Monique —
Lewis J. Rogers

On motion to amend, without payment of Costs — upon Defendant's name, by adding it to "Rogers J. Lewis", instead of Lewis J. Rogers as it now stands. —

Benton. etc. case, Marchand, or Albert — L Staggs & Lindsay where such amendment was rejected —

Tuesday 13th Oct. 1812 .

Hart & Co.
Delagrave

{ On Plff's mo. to reject plea filed by Defd. as too late. —

Ross for Plff - Plea filed on 12th. Judg. rejects the Exception on the 8th.

Vigue for Defd. That Plff was admitted to amend on 1st inst that amendment has not yet been made, & the plea is always in time until 3 days after the service of such amendment —

Ross for Plff - The right to service of amendment was waived by Defd. by his pleading an exception the day after, the amendment was made by the Prokly in the writ in the face of the Court under its direction —

Mo. granted

Cottrell & al.

Wright & Co.

{ On Plff's mo. to adduce evidence to-morrow.

Gale for Defd. Notice of motion irregular, & delay too short for going to proof to-morrow

Peaver.

Perkins.

Jewell & opp't.

{ On opp't. motion for time to file his moyens d'oppos'

Sol. Genl. for Plff. The application is made too late as the moyens are due to day, the notice to file the same having been given on 10th inst. at 5 o'clock in the even-

Davis
Allison } on Plift's mo. to discharge rule for trial on 16th on
pay of Cork, and that a new Com. Roger be granted to
him — Grantee —

Wednesday 14th Oct. 1812 —

Witnes - day -

Thursday 15th Oct. 1812 —

Sir A. McKenzie
& al' v.
Beaubien - }

On trial before the Jury -

Jasper Tough - Defend. has done business with the
Plift house for 15 or 16 years - His acc't. was sent to him every
year - The goods in the Plift store are marked with the
sterling cost - & defend. others must have seen those prices
so marked when they came to purchase goods - Has seen
the defend. in Plift store laying aside goods -

Joshua Stanfield - was clk in Plift house - he has
seen him chuse goods from their store have the sterling price marked
on them - His acc't. were regularly sent to him every year, & he
never heard him make any objections thereto -

Robert Gillespie, Clk in plff^t House from 1802 to
1808 - same evidence. -

Silvain Benoit was clk to Defatt. in 1806, proves Defatt's
memo writing to an Inventory -

Saint Delfaute was clk to Defend. before 1802
who then did business w/ plff.

Berryⁿ Beaubien - proves nothing. -

Defence -

Examinations of Mr Yeoward & Mr Gerard two of plffs -

Verdict for Plff^t £347. 7. 5. w^t Int^r till ^{Dec 1811} paid

Tesseyman.

Mr. Leod.

Action de Reven d'cation. -

Stuart for Plff. - action for effects belonging to Plff
which have been retained by the Defend. - who pretends
never to have refused them - only question as to Costs. -

Ogden for Defatt. goods were demanded by a person without
any order from Plff to receive ~~them~~ The effects were in
an out house in the possession of the Gardener. -

Tesseyman

Mr. Leod.

Action for assault & battery. -

Stuart for Plff - assault violent and unprovoked - & damages
ought to be exemplary. -

Ogden for Defd. objects to testimony of Blk of Cane - to prove
a fact which took place after the Cane was set down for hearing
w^t the Defend. confession upon a Bill of Indictment for the battery

Friday 16th Octr. 1812. —

Hart
Jones. &c } on Defend^t mo. upon closing testimony, for ex. of Plett
on facts sart. at Three Rivers, the Co. considering that where
there had been no laches on the part of the Defend^t. the
distance was not so great, as to consider it a retardation de
procès, to grant the motion. —

Clarke & ux
Antill & al } Judget. ordering Excs to place out the minors money
upon security as req^d. by the wife of the Testator, before
adjudging upon the demand of the plett. —

Needham
Burton } on Defend^t mo. to quash writ of Capias, as irregularly
sued out - 1st Because no affidavit has been taken in
this cause, but in a case of Needham v. Burton - 2nd.
Because the sum said to be sworn to by the Indorsement
on the writ is £600, whereas the sum sworn to is £250 -
3rd. The writ is to answer to one Needham, & the declaration
states Plett to be Needham. —

Stuart for Plett. The only error is by Clerk of Court by
writing name of Weedham instead of Needham as is
correctly stated in the declaration — such error is amendable

1 Tid. Prae. 291. — case of Hart. v Delagrave. 5th inst. —

The insufficiency of the Indorsement does not vitiate the
writ, by which alone the Defend^t is brought before the
Court. —

Stansfield
v.
Boston.

On trial by Jury.—

Susannah Labley - was servant to Mr. Jos. Stansfield in Dev. last where Pfeff then lived - about 11 Dec. last as she was coming home from the nursery - heard Defd. say w^t. a loud voice that he would knock Pfeff down, as she was passing by to go into the house - it was then dusk about 6 o'clock in the evg - the Pfeff came into the kitchen a few minutes after to ask for water, when he appeared all bloody - his eye app^r. much bruised - in consequence of which Pfeff was confined to the house some days -

Jos. Prothomme, was serv. to Jos. Stansfield in Dev. last, when Pfeff then lived - Some person came to the door in the evening about 7 o'clock and asked for Pfeff, who went to the door, and returned soon after with his face much bruised - saw some blood on his h^rdf. -

Nichol^r. Osborne - recollects passing home of Jos. Stansfield some time in Dev. in the dusk of the evening, saw some persons engaged in wrestling & fighting but could not distinguish who they were at first, but upon going up w^t. a view to separate distinguishing them to be Pfeff & Defd. had some conversation w^r. Defd. respects the nature of the difficulty between the parties, and understood that in consequence he had gone to "Pfeff on that head" -

Boutin.
Bissonnette

} On deed of Sale. —

Vige' for Plaintiff. The action is agt. over in Bte Bissonnette in which one Jean Bte Bissonnette peue intervenes & says, that he never had any dealings with nor does he owe any thing to the Plaintiff. — The sale in question was made to Jean Bte Bissonnette fils, but Plaintiff does not consider it necessary to describe the deft by name of fils, — The writ was served at domash of Jean Bte Bissonnette fils who is defend. in the cause. —

Sullivan for Defendant. says, that, his, Jean Bte Bissonnette peue, owes nothing to the Plaintiff and that suit ought to have been directed agt Jean Bte Bissonnette fils to distinguish him from the Father —

Vige' Bissonnette peue comes improperly before the Court to defend, as the sum was served upon Bissonnette fils, who alone has a right to say anything in that case

Mme Baillif
Beaubien,
Cur. ce

} Action for reprises matrimoniales. —

Rolleau for Plaintiff. The Plaintiff had accepted a certain immovable property in lieu of all her rights, but this land having been previously alienated she could not yet it and therefore is compelled to bring the present suit. —

The Curator submits to the Court.

Teasdale
McPherson

} action on deed of sale -

Sullivan for Defendt. There are mortgages on the Plff's land which he sold to Defendt & he cannot be held to pay the purchase money without security -

Wagener.
Teasdale

} action on a deed of Sale.

Ogden for Defcte. There is a mortgage on the land of the plff, which he has proved upon fast-
tant. The plff says that he has paid that
mortgage, but he must produce the receipt, or
hold the Defendt harmless by good security at the
payment of the said Mortgage -

Trew
Gilman

} action on a foreign Judgment

Ogden for Plff asks for Judgt. on the evidence
adduced -

Ross for Defct. There is no proof of the seal
under which the exemplification of the Judgt. is
certified - cites Esp.

Deshautels
Davidson } On rule to shew Cause why a certain paper entitled
Duplicques. filed by Defendant should not be rejected from
the Record as irregularly filed -

Beaubien for Defendant. Plaintiff has alleged a new fact in his
replication, to which the Defendant ought to have an opportunity
to answer -

Charles
Sauve - } action on a promissory Note -
Plaintiff asks for Judgment. -

Sullivan for Defendant. Plaintiff has not proved that Defendant
is a merchant to give legal effect to the blank endorsement.

Gale for Plaintiff. The Defendant is stated to be a merchant
and this is not denied by Plaintiff. That Plaintiff is entitled to his
Judgment -

Henderson Lal' } action on a transport. -
Ferriere. -

Rolland for Defendant. The debt was not due when
the suit was instituted - The debt is due only on the 8th
Nov. next by the original contract with one Belanger -
No proof of a debt due to Belanger, nor any thing
stated in the declaration to that effect -

Vige for Plff - nothing appears to shew that Defendant had delay till Nov: next for the payment of the debt, and the Defend^t promise to pay the debt upon the service of the transport being made shews that there was no such delay -

Saturday 17th October 1812

Needham
Burton.

The Plff motion to amend, granted.

Deshautels
Daveluy

Both motions rejected. - The Court being of opinion, that a party ought not to file a duplicite ~~ex parte~~ case without leave of the Court, but the Defd by answering thereto, is not entitled to demand that it be rejected and the plff cannot be allowed to demand a rejection of the duplicite in consequence of his giving room thereto by new matter pleaded by him in his Replication. -

Clarke
Mc Dowell

On defend^t now to discharge rule for trial, by reason of want of notice to strike the Jury.

Bricault
Bricault

Upon Plff's motion to reject an opposition filed by the defend^t. to sale of his effects, which had been seized under a former Writ, & had not been sold in consequence of an opposition made by the Defend^t - and

and which had been directed to be sold. -

Bedard. The writ of Ex. is not for the sale of effects already seized, but a new writ, or al. p. fa. to seize other goods and effects, and by virtue whereof other goods and effects not seized under the former writ, have now been seized, and further that until the effects already seized shall have been sold, the Plaintiff is not entitled to any new Ex. -

Boston for Plaintiff. The goods seized under the former Ex. were of no value, & ought not to preclude party from further Exon. -

Seduc. }
Lalonde } Action upon an "avis arbitral"

Stuart for Defendant. The compromise is illegal, hav. been entered into by parties not interested in the matter - the parties to this act were, one Deshay & several other parishioners instead of the Syndics. - The action ought to have been brought by the three persons w^t. whom the Defendant contracted, & not with Plaintiff alone who is only one of them - That marché was made with Syndics who are the persons who ought to have bro^t the action -

Rollands. The Plaintiff & Defendant were parties to the contract which became the subject of the arbitration, & the Defendant ought not to be allowed to come ag^t his own act. - Plaintiff hav. disbursed the money directed to be paid by the award, he has an action ag^t the Defendant who is condemned to pay it - There are also counts

in the declaration for monies paid and advanced for the
Defendant. The plaintiff and every parishioner had an ~~interest~~^{interest}
in the object in question. —

Delorme
v
Marston

} Action on Pay Note. —

George for Defendant pleads compensation. —

Beaubien for Plaintiff. The object pleaded in compensation, is
for delivery of boards to Plaintiff, not being a liquidated
object, cannot be set off w^t. Demand of Plaintiff. —

Allan.
v
Harris.

On rule to shew cause why Defendant sh^t not be liberated
from his confinement in gaol, the allowance ordered
to be paid to him not having been paid on Monday
last. —

Stuart for Plaintiff. The money was tendered between twelve
and one, and in such a short space of time when there
was no appearance of wilful neglect to pay, the Court
will not act rigorously ag^t a Creditor — so settled in Case

McAll.
v
Sealey.

} Action upon Defendant's protested bill or order.

Ross for Defendant. Draft is conditional — & does not authorise
Plaintiff to bring the action —

Sullivan for Plaintiff. The Defendant was Plaintiff's debtor, & draft he gave
failing in paying Plaintiff, he is entitled to his action of Defendant —

Demareis
Leonnard } action en Separation.

Mc Arthur.
" " Action to
Mc Donalds

Sullivan for Defd. Plff. cannot have action agt Defd. - there is no liability in him towards Plff. The Plff. cannot have the conclusions of his action - action ought to have been for a division of the effects in the Inventory - Not stated that Plff. mother was married w^t her all claim from whom Community she claims rights -

Ross to Plff. in reply. right of Plff. provided by acts of the parties & papers filed Defd. has made an Inventory of effects - they are not fit to be divided - must be sold

John Young
David Stansfield } On trial before a Jury - action for a malicious prosecution -

Alex Reid is Clk of Peace for the district of Montreal - In Jan'y. last a bill of Indictment was preferred agt. the Plff at instance of Defd. for an assault & battery & ignored -

Jacob Marston. is a Constable - was charged in January last with a warrant to apprehend the Plff upon a charge for an assault and battery in consequence of which, he did arrest him -

Jean Marie Mondelet, moves deposition of Defd. - upon which he grants a warrant agt. Plff. dothm on a charge of an assault & battery - in consequence Plff was arrested & gave bail to appear at the Sessions -

Claude Thibecau - was charged with a warrant agt one John Boston in consequence of which he arrested him

Nicholas Osborne. Lives near house of Mr Jos. Stansfeld one evening about Six O'clock in Decr last as he passed that house he saw ~~several~~ ^{some} persons at door, he knew Mr Burnside it was then dark - did not see Mr Young Cliff there

That he also saw one Boston there who was scuffling with Defend^t. and he could see that blows were given saw Defend^t. afterwards who had his face much bruised

John Auld - knows Cliff for 11 Years - always considered him to be a man of a quiet temper & a peaceable man - in consequence of the Cliff's arrest, he was delayed from going to the Upper Country where he usually goes every year, which may have injured him -

James Miller - same evidence -

Evidence closed.

John Boston. had difficulty w^t. Defd^t about 11 Dec last in consequence of which he went to his house between 5 & 6 in the evg - when words ensued and afterwards a scuffle - that Defd^t made first blow - & then Cliff was not near the parties, but had gone on -

William Hall - was at house of Mr Jos. Stansfeld on 11 Dec last, when a knock came to door & a person asked for Defd^t he went out without his hat - it was then about 5 O'clock

in about 10 minutes after he ret^d. to the house with his
face much bruised and bleeding, ss^t he had been knocked
down by Mr Barton -

Susannah Labley's Evidence -

Benjⁿ Beaubien, advised prosecution under the circumstances

Verdict for Dft^t -

Monday 19th Oct. 1812. —

Delorme
Marston } The Compensation set up as note, disallowed

Hall
Sealey } Jdg^t

Terrien
Messier } Ref. to arbitrs

Hendersonal
Furrier } Jdg^t. on transfer

Hanna.
Jⁿ Jackson } Jdg^t

Dernarens
Leonnard } Jdg^t. of Separation.

Boutinoux
Bissonnette } ✓ action at Bissonette instead of Bissonette fils - dismissed

Garry
Barber
Green Opp-

Demands for a ferment suppleton of the Oppost. dis allowed
as he did not appear to be the purchaser

Bricault
Bricault
Bricault

Order for sale, first of goods seized under first Ex'tn, & afterwards
in case of insufficiency of those goods, then to proceed to sale
of those seized under 2^d Ex'tn. —

Leduc
Lalonde

Defendt Excep. allowed - a day in Court given to plifff upon
the money Counts states in his declaration. —

Sarault
England
and
Sarault
Grenel

A day for proof of facts of fraud & Insolvability alleged
by the Defendt in his plea -

Same Interlocutor. u

Tanguy
Stours

action dismissed. u

Wagner
Teasdale

Judg^t

Teasdale
Mysherson

Judg^t

Tesseyman
McLeod.

Dismissed - Proof not sufficient of refusal of goods

Jesseyman
" McL eod }
} Judge.

Sacoux
Paris -
Paris and
Robitaille }
} Judge.

Johnson.
Lebert. }
E Contra.
application for the serment supplémentaire, granted -

Clarke.
Mc Dowell }
On motion to discharge trial for want of notice
to strike Jury agreeable to rules of Practice - Granted.

Collins.
" Georgen. }
Pliffs mo. ^{for hearing} to reject Defendants opposition - granted

Bushy.
Woolman }
Judge. nom. report of Practicians.

Tuesday 20 Oct: 1812.

Dugas del
" Bourgeois del

Judge hom. report of Experts -

Poubret
Deouaigne

✓ action dismissed - the Ct admitting proof made of the
sons being price,

Allan.
Farris

✓ Motion to discharge Defendant granted -

Barlow.
Dunlops

✓ Action dismissed. -

McArthur
McDonalds

Judge ordering effects in hands of Defendant to be sold
monies divided among heirs. -

Busby
Woolman
Ross garnish

✓ Plaintiff's motion for payt. of monies in the hands of
the Garnishee. - Cont'd over for Judge in vacation -

✓ Action dismissed. -

Trevor
Gelman

✓ The Court admitted exemplification of a foreign
Judge under Seal of one of States of America as sufficient
proof, without proof of the seal. -

+ Practice

When Defd. has failed to file a ple. - Pltf may proceed
agst. him without any notice, & may send papers to Chambers for
Judge without any motion -

Young
Stanfield } mo. for Judgt. on verdict - opposed - in case of
Stevenson v Guy, where mo. for Judgt. on verdict made
on 3^d. day after verdict, was rejected -

Cottrell
Storrow Sal } On Dft's mo. to be discharged from his arrest
on ground that they were not about to leave
the Province. -

Stuart - The Clifff affidavit is positive & it is contrary
to practice to enter into a discussion of the fact therein
stated. -

And of this opinion was the Court & discharged rule
obt. by Dft. -

su. 19 June 1812.

Demand
Wallace } On question of Costs to be allowed Clifff on
prosecut's sale of Defend^t moveable property -
Holt Sal. opp^t The Court were of opinion, that in case of opposition
by Creditors of equal right with the Clifff, he
could be entitled only to his costs of scire facias & sale of the
effects, but not the costs of obtaining his Judgment -

Wilson v. Talb.
Prestle v. Talb.

Cases under consideration.

authorities refused to try Ch. I. in his notes on Case -

2. Eq. Ca. ab. 215. c. 11. -

= Talb. Eq. Ca. 164. 166. - } on subject of mutual Covenants

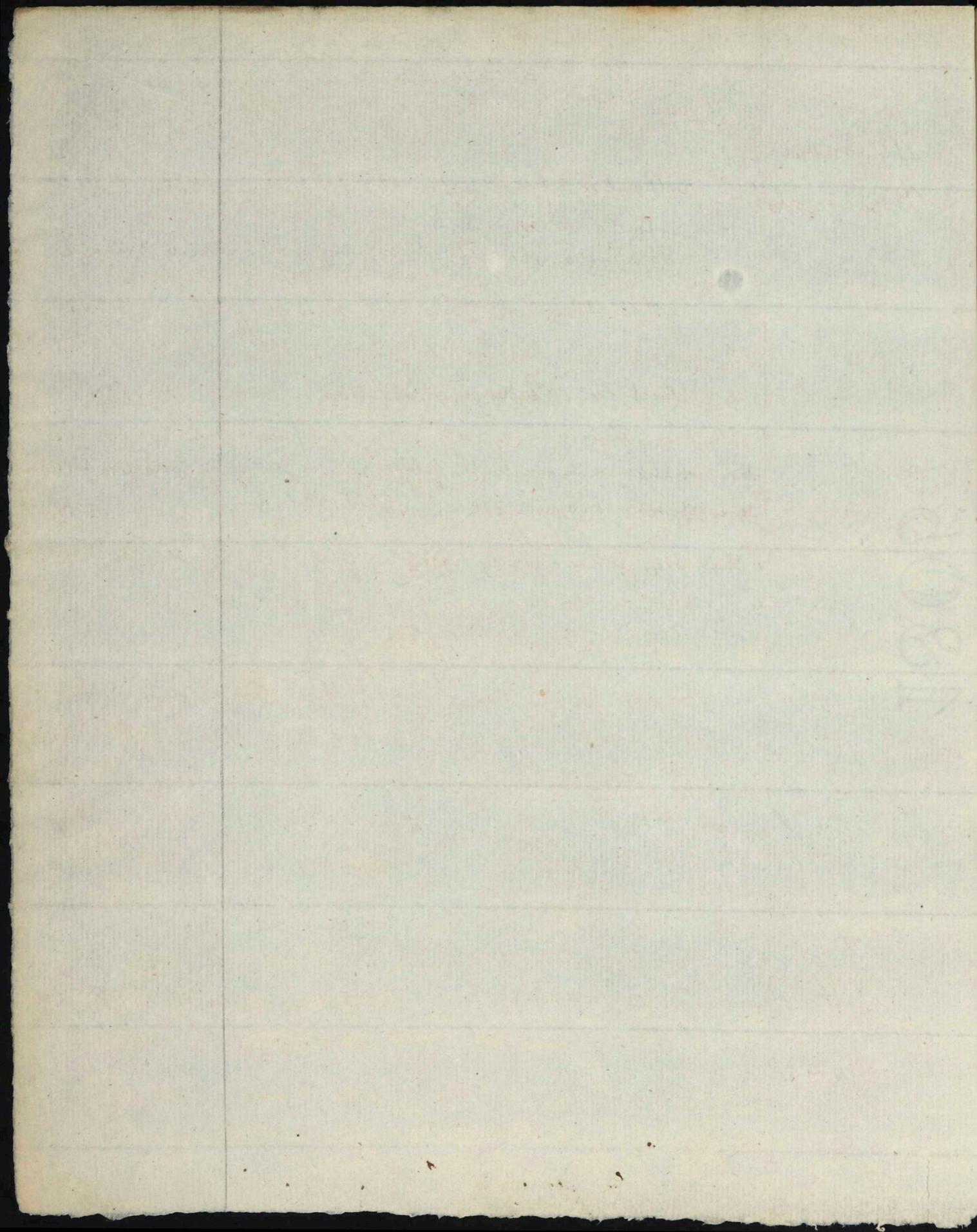
2 Poth. Louage. N^o. 410. p. 331. A⁴ - on the exⁿ of Contracts -

=

But see 1 Chitty on pleads. 313 -

Where it appears that Defend^t relied upon their remedy, and
did not intend to make the pliffs performance a condition precedent
= cases referred to. 1 Saund. 320. n. 4. - 1 Wils. 88. -

1 Chitty. 314. Where a party has rec'd. a part of the consideration see



February Term 1813.

Monday 1st Feby. 1813

This day a Commission was read appointing
The Hon. Mr Justice Foucher, one of the Judges of
this Court in the lieu & place of the late Mr Justice
Parry. —

Johnson
Hutchins

Pliff moved for a delay of 4 days to file his exhibits
in support of his demand, particularly the Plff. bill
deed to the Seignory of Argenteuil, which has not yet
been made out by the Sheriff —

Ogden for Defd. says, that the action was instituted
on the 31st Oct. last and Pliff had suff: time to prepare his
exhibits to be filed to day, agreeable to the rules of Practice

Cir. av. vult. —

Benny
Robertson

On Defendt's application for the sermt. sup. to be
referred to the Defendt. the action being by Pliff as
a Journeyman at Defd. his master for wages —

Stuart for Pliff — the sermt. sup. proceeds from the
new motion of the Court & is never granted at the
demand of the party wishing to be examined —

Shaw
V'citch } on Defendt's mo. to quash process, as the writ is
returnable on Friday 19^t Oct. last - there being no
such day -

Stewart for Plift, says, that Mr George who was the
Atto of Df't. last Term agreed to waive the objection
Sullivan, for Df'd. contends, that Mr George was
not the Atto of Df't. nor authorised to waive any objection
that he has this day taken off the default of Df't. and
makes this motion in consequence. -

Cur. avis. vult.

~~Wednesday~~
Tuesday 2. February 1813. -

Porteous	{	Papers to be sent up on mo. for ex. of writ. -
Munro		
E Contra		
Bricault	{	on Plift. mo. for delivery of monies & his master dft. oppos -
Bricault		
Charland	{	On Plift. mo. to reject certain exceptions à la forme, which were filed with plea to merits & too late, also because 2 guineas were not deposited therewith, & finally because the except. is general -
Morin		

Sullivan for Df'd. the ex. is per. en droit, - That action is wrong but
being in name of Plift who is merely an agent. - That Except. is within
time, as this cause was not returnable on first return day of Term

and therefore the pleading whether exception or other pleading
is in time if filed in 15 days after the return. —

Becambien for Plff. the delay of 15 days, is given for filing
pleas to the merits, & is meant as an extension of the three
days formerly given for this purpose. —

Cuvillier.
Montgomery.

Plffs mo. for cognovit. —

an affidavit or recd of facts stated by Def't. —

Webster.
Proctor.

on rule obt^d by Plff for Def't. to show cause why
rule for trial of cause to day shd not be discharged
granted by consent —

Plff moved for trial on 10th —

Def't. by Gale — the cause ought to dismissed as by a non-suit entered
under rule Prae. in June 1844 for not proceeding — this was overruled

Dom^r. Rex.
Dumas elou
Dumas yr.

on application by Pro for a Hab. Cor. being charged
by a warrant of Com. for "treasonable practices" —

Sullivan for Pro the charge of "Treasonable practices",
can be considered only as a "misdemeanor" By St. Westminster
Pr^r in case of misdemeanor an of right entitled to Bail.

7 Tim Rep. King v. Despard — several persons charged with treasonable
practices, are allowed by Att^r Gen^r to have been admitted to bail —

Flu

Sol.

Sol. Gen^t: King. in Despard. The question has been decided
that "Treasonable Practices", is not a misdemeanor, but a
higher crime, & that this form of Com. was used since the days
of Wm & Mary -

Sullivan - The question in the case of Despard, whether the
Commitment were legal, here that is not contested - but
the point is whether the ~~Coy~~ are available - by authority cited
Despard w^t have been bailed b^t not the Hab. Cor. act been
suspended - That the Court cannot alter the nature of the
Commitment, nor recommit them under any other charge arising
out of the depositions & examination -

Bd. Rep. Serres vs Rockfort. - Analogy between case of
Prisoners & that of Plff. who was bailed. —

Wednesday 3^r. Feby. 1813.

Chareauel
Morin & Poitras }

The Plaintiffs motion to reject the Defent's plea over ruled

The King
or
Dumas

The Court refused to admit the pris^r to bail. —

Davis.
Allison
& Contra

On trial by Special Jury. —

Objection taken to testimony of Th Miers a witness
for the Plff - who swore, that in case the Plff
succeeded in his Cause, he the Wit^r w^d lose about £200. a
bal^c of acc^t between him & G^ro. & W. Hamilton - Df^r
objected - that it was enough that the Wit^r had an interest in
the Cause, whether for or against the party producing him -
compared to case of a parent brought up by ^a the party under the
rule laid down by the Code Civil, who cannot be a witness
for the person who brings him up although ~~to be off~~ his the
relation of the adverse party only. —

The Court admitted the testimony of the witness - Peake
Ev. p.

Verdict for Plff £1100 —

Johnson
Billings }
Sir J. Johnson opp^t

On the opposition afir'd' annulles of Sir John

Stuart for Oppost. contends, that Judg^t. is final, but
conditional only as to the pay^t of the money for g^t Exp^t
has been send out, without that condition having been complied
with. —

Chalifoux
Mariotte }
Bédard opp^t

On motion of

Thursday 4th Feby. 1813

Chalifoux
Mariotte }
Bédard opp^t

On motion of opp^t. for sale at folle enclere of
land purchased by one Montplaisir. —

Stuart for Montplaisir, states, that motion for the sale
is made by the plaintiffs attorney for his Costs — the
amount of which he offers to deposit in Court, and to give security
for the balance of the purchase money. —

This security the Defend^d. and Mr Bédard refused to receive
or to acquiesce in the arrangement proposed by Montplaisir

Beaudouin des
Deschamps &

Bourret for
Def^t. moved that the Process sh^t be quashed incasmuch as the delay in app^t. granted
by law had not been allowed him — & further because the Def^t. is described as well
in the original as in the copy of a^t Writ of process to be resident at Repentigny, whence he
lives at St Rock. — The court allowed Sheriff to answer return by adding the name of Desme

Davis.
Hamiltons
& Contra-

On trial by Special Jury. —

After the evidence on both sides had been closed, the parties, upon the recommendation of the court, agreed to refer the whole matter in dispute as well in this cause, as in the cause in which a verdict was rendered yesterday between Davis & Allison, to three arbitrators, to be chosen by them, whose award should be final. —

Friday 5th Feby 1813

Beaudouin
Deschamps

Marchand.

Williams
Richards

Duvaults

"
Denoyer, Ver
Dubreuil

Releas'd.

On Plff. mo. to amend his declaration, without payment of Costs. by inserting words, cidevant de la paroisse de Repentigny, maintenant de lad'e paroisse de St-Roch. without payt. of Costs. —

on Defd's mo. Plff. mo. to reject Plea to the forme as being filed too late — [•] Harb. v. Delgrave. Last term the Plea, that at time of suing out process he was commorant at 3 hours distance beyond Dorchester, sot in the town of Dorchester — but return of service, is upon him personally at his domicile at St John's —

Action for arrears of rent & pension —

Matter referred to practitioners, who hence made their report —

Plff. demands Judg't. on Report —

L.M. Verjé, submits to report — but submits the joint of costs. —

Ménoux
Renard
Renard

On exception - that Def^t not bound to pay the rente in question, as the land sold to Def^t by Pluff was not the property of Pluff - therefore it is a trouble to the right of the Def^t. -

Port. Donations Entw. vif
sec. 3^c art. 1. §. 1
6 vol. p. 485. —

Bedard for Pluff. Def^t not entitled to plead the above except as he was well acquainted with the rights of the Pluff in the lands in question, when she sold it to Def^t. That the Pluff cannot be bound to guarantee land given by donation -

Kleese.
Marchand

On Def^t's mo. for a rule &c. why we shd. not be permitted to file a plea of ex. that Pluff has become an alien enemy - Since the issue joined -

Stuart. This a disability of Pluff's right - there can be no such recurrence to this plea, after issue joined, which admits the Pluff's right of action -

Ross for Def^t. The question is not as to the Pluff's right, but as to the expediency of bringing that question before the Court - this an exception, which can be filed en tout état de cause. -

Thibault.
Provost
Marmier

Action for rente & pension. -
Bedard for Def^t. That suit upon q^t the action is founded is illegal, as it assumes an act made between the parties, & the Superior Court in q^t that suit was given, had not a competent jurisdiction to that effect - That the Report of the Experts which

which was home. estimate, the article at a high rate, but
can be considered only as an estimation of what was then due
not in terms of payt. not then expended —

Saturday 6th Feby. 1813. —

Beaudouin
Deschamps

mo. to amends granted on payt of costs. —

Tibault
Provost
Marmier

Order that value of articles be ascert^d. before deciding on
the merits. —

Kees.
Marchand

mo. granted. —

Bricault
Bricault

Judg — ordering payt. of monies levied, & costs of opposⁿ —

Cuvillier
Montigny

a day in vacation given for proof on Defendants affidavit.

Marchand
Richards

The verbal mo. to reject a pleading from the records
is not allowed by the rules of practice — the only case
where such verbal mo. can be used is for the hearing on
the merits of an exception. sec. XI. §. 3. in fine. —

Martin
Mondor {

Beaubien.

on Plff's mo. to amend deo. by changing name of
Dubalme, the notary before whom the act was passed

to Gamelin Gaucher, on payt. of costs. —

L.M. Vige. says, that Plff is too late, as Defd. has filed his
plea.

Mo. granted. —

Mure.

Meiss & al. {

Action for recovery of ~~penalty~~ damages for non-perf.
of Covenants. —

Stuart for Plff. The sum demanded is for £5000 for stipulated
damages. The Court directed the quantum of damages to be
proved - no demand for this purpose by either party. Neither
of the parties have made proof under the Interlocutor. Therefore
the presumption is that the damages are not too great & Plff
ought to have Judg. for same. The obligation is not penale,
but for damages stipulated & agreed to by the parties in case of non
performance of the Contract - it is an oblig. alternative ^{obl. N° 3A1} ~~both~~
~~ways~~ and if the damages accrued to the Plff had been more than
£5000, yet he could have asked no more - Obl. N° 3A1. in fine -

Rgs. de l'ur. v. Peine contractuelle p. 67. - 2. Ev. Polk. 94. 5. 6 - 8.

Even if the sum demanded had been a penalty, the Defd. should
have pleaded that it was excessive & beyond the injury sustained
and by his proof shewn this - but where no such plea has
been made, nor any such proof shewn thereon, nothing remains
for the Court but to award that penalty as the damages -

Lebret. v. Papillon
4 East. 502.

P. Ellenborough. —

It must be by the Defend^t. that such diminution of the penalty must be pleaded - if he wish to benefit thereby -
Ob. N^o. 342. -

338. & 350

Ross for Defd^t. This is an action for a penalty, ~~and~~ unless the P^liff cannot recover without proving damages - Ob. N^o. 338 to 350. Interlocutory made to assist the P^liff in supports his action by making that proof - a great part of Defd^t's agreement have been fulfilled nearly $\frac{3}{4}$: c^rit. -

Mounsey.
Cogswell.

The cause came to be heard, when Defd^t objected that the amendment permitted to be made in the declaration had not been served upon him. - Objected that Def^t ought not to avail himself of this, after the cause had been fixed for hearing - The Court however were of opinion that the an amended copy of the decl^t: sh^d have served on Def^t refused to proceed

Allen.
or
Harris. -

on Def^t's pr^o. to be permitted to file an exception to P^liff's right further to continue his action, as he has become an alien enemy since the institution of the action, and this after plea pleaded -

Stuart for P^liff this is a disability to the person of the P^liff which cannot be admitted after plea pleaded.

The Court granted the motion. -

Monday 8th February 1813. —

—
Witness-day.

Markham
Williams }

on Plif^t no. to reject Pleas^c Ex ap. filed by
Def^t - because it ought to have been taken by
motion and not by pleading - 2. because the exception is in
itself complete, not stating when the responde^t of the Def^t is -
Sullivan. There is an imperfection in the ~~word~~ declaration
as to the description of the Defend^t of - of advantage can be taken
only by pleading -

Tuesday 9th Feby 1813. —

—
Witness-day

Brien
Namur }

on Defend^t no. to reject answer to exception as
not joining issue in law on the matter of Law
Sullivan for the Def^t - The Plif in his answer instead of
joining issue on the exceptions of the Def^t - answers to the said
exceptions and states, that the exception is not sufficient in law
to bar Plif of his action, whereas the Plif ought to have maintained
the principle of his demand at the bar pleaded by the Def^t

Wednesday 10th Feby. 1813. —

Bruin & Derode
Namur

Defendant's motion, over-ruled. —

Charland
Morin &
Portras

The Court were of opinion, that in practice when matters of law are pleaded in bar of the action, there should be hearing thereon before appointing for the English

Johnson
Billings
Johnson Oppo

The Court were of opinion that the Exon had improperly issued and quashed the same —

Hamiltons
Johnson

Motion for time to plead disallowed, the Defd's affidavit not being stating grounds of plea to be made nor nature of the papers in hands of McLaughlan, —

Cameron
Baker

Judg't for Plaintiff

Dongani
Normandean
Dupre, East

Action dismissed. —

Marchand
Williams

Plff. mo. to reject Defd's plea - over-ruled - The matter being properly set forward by Plea, the Plaintiff must either answer thereto, or move for hearing on the merits by verbal motion —

Chalifoux }
Marotte }
Bedard. en
distractio[n] de po[ur] {
Montplaisir
Purchaser }

1801. ch. 9.

On motion of Montplaisir, the purchaser, to be allowed to deposit the amount of the sum for which Bedard sued out Execution, and to give security for the balance of the purchase money, until the final distribution, & hearing on claim of the purchaser of the Plaintiff & Defd. for their joint obligation to him for a greater sum of money than the amount of s. purchase -

Deshautels }
Leduc. en {

On motion of Puff to examine the wife of the Defd. upon facts & articles, she not being a party to the suit -

Bender for Puff cited the following cases & authorities -
Beaubien v. Petit. - Rolland Leduc v. Lamy -
1 Pigeau. 234 - Poth. Proc. Civile

Collins }
Georgen }
Georgen Opp{

On Puff's motion for Enquête. -

Objection by Opp{ - that case was at issue on 17th Oct. last when this motion might have been made, therefore now entitled to 14 days notice of the mo. qd. has not been given - cite similar case Dufaut. v. Beausire. Oct. 1811, where mo. was rejected -

Johnson }
Lukin. {

Action by Puff as Seignior for Cens Trunks

Opp{ for Defd. Defd. is not in poss. of part of the Land's, vizt. 1st. 2nd. 3rd. 4th. 5th. 6th for which cens trunks are demanded he having sold the said lots of land before the Puff was Seignior -

That the Cens rentes have been paid to the former Signor
for the same Lands -

- Georges fu Puff. It is not enough that Defendt has sold the said land, he ought to have shewn that such sale had been effectual by a transfer of the possession to the purchaser - no proof of this - The Puff is entitled to all the arrears due to the late Signor at the time of his purchase. - *Own. Port. Port. p. 326. Des Cens. art. 2. sec. 4. §. 1.* -

Rea
vassal

} Action on a Charter party for damages as vessel
lett was not sea worthy.

Bedard for Defd

1. The action is prescribed in law - the Charter party is dated in Augt. 1808 and was determined in July 1809 and the present action ought to have been instituted within one year from that date. *Ordre de la Marine. Tit. 12. art. 4. 5. 6. et
Port. Louage Maritime.*

2. The action as stated, is not maintainable, because the party letting the vessel is not bound to warrant its sea worthiness - The hirer must in this respect judge for himself, and if he has once sailed, he must stand to the consequences - he ought to have informed himself of the state of the vessel. *Port. Louage Mar. No 19*

3. The present action, is a chose in action, & cannot be maintained
In a former action instituted by Defend^t. ag^t the Plaintiff for
the hire of the Schooner in question, the Defend^t in that action
pleaded by exception that the Court could not maintain the same
for the same reasons as stated as the grounds of the present
action, namely that the Schooner was not sea worthy. —

Stuart for Plff in answer

The Defend^t. has stated in his plea a prescription of two years,
he now relies upon a diff^t point a prescr^t. of one year — but neither
will bar this action, and the authority cited applies only to the case
of a demand for freight, or damages ^{for injury} done to goods on board the vessel
but the question touching the due performance of the Contract between
the parties, by reason of the sea worthiness or non sea worthiness of the
vessel contracted for does not fall under this prescription —

2. The Defendant specially bound for the sea worthiness
of the Schooner in question by the Contract —

3. Chose in action does not apply — it does not appear by the
plea that the question before the Court in the former action, was
the same as the present — that it regarded the same Schooner, or
on the same charter party — Potent. chose in action. The cases are
different — The former action was for freight — which Plaintiff had become
bound to pay, which regarded the obligations of the hirer of the vessel
The present action is for non performance of contract & regards obligations
of Dft^r. — and the defense to the former action was

founded upon the circumstance of accidents & delays occurring from dangers & perils of the sea -

Bedard in reply. -

The Plaintiff cannot have any other action than she might have been entitled to who had had his goods damaged on board the Schooner, & therefore within the prosecution of a year.

The Defendant is not bound for the sea worthiness of the Schooner - Ord. Mar. tit. 3. art. 12. Fact.

The identity in all things is sufficiently shewn to make the plea of Chose in action apply. -

Lesperance
M. Gill Tal

Action ag^t the Defendants as Commissioners of walls & fortifications, to guarantee Plaintiff as a demand by the Crown

Sol: Gen: The Plaintiff has taken conclusions ag^t the Defendants personally and not as Commissioners, whereas if ever any sale had been made by them of the lot of land in question it must have been as Commissioners, and as such only are they answerable, unless the Plaintiff has shewn that they had exceeded their powers as Com. q^t is not pretended. 1 Parl: Not: 682 Pts. Obl. 55, y^t 82.

Stuart for Plaintiff. The action is brought ag^t the Defendants as Commissioners, and the conclusions therein must refer to the capacity in which they are sued.

Shaw
v.
Marion.

} Action on Revendication for a Seal. —

Bender for Deft. action ought to have been brot. in the Inferior Court - object in question not worth £3 - Deft. purchased Seal for its full value - He in good faith made improvements thereon and offered to give it up ~~on~~ being paid for said improvements, which Plaintiff refused. —

Messier.

Smith. v.

X

} Action of debt on deed of Sale

Bedard for Deft. The Deft. has not been able to get possⁿ of the house and lot sold, by the act of the Plaintiff, but has suffered damage in this respect by reason of the law suits in which he has been engaged in this behalf. — Also there are mortgages on the property —

Lacroix for Plaintiff. The Defendant was bound to get poss. of the premises at his own risk & expence. —

Sanchez
Nadol
Quimet & Tal
Interest

On P. Verbal of a Cours d'Eau - brot. up from the Inferior Court by Evocation. —

Bedard for Interestés. says, they were called into the Cause by rule of Court, whereas it ought to have been by Summons, & therefore they cannot be considered as legally before the Court. —

Dufresne
v.
Durand

X Action of damages for non-performance of certain Covenants touching Carpenter work.

Sullivan

Sullivan for Def^t. The Defendant was prevented from fulfilling his Contract by reason of his men having been called away in the defence of the County - he has used all diligence to finish it, and the mere lapse of time alone does not put him en demeure so far as to entitle the Plaintiff to his damages - a further delay ought to be given by the Judge for completing the work after the expiration of which only can the Plaintiff claim damages for the non performance of the Contract - Post. Obl. 146. —

~~Allen
Harris~~

On rule to shew Cause why Defend^t sh^t not be discharged from his arrest & imprisonment under the Ca. ad resp. sued out in this Cause —

Ross for Def^t. 1. Defendant was arrested upon a former Cap^t at the Suit of the Plaintiff & in Gaol, from q^t he was discharged, by reason of Plaintiff not paying him regularly his alimentary allowance. being thus discharged, he could not be arrested for the same debt.

2. The affidavit in this Cause is made by Mr Stuart, the Plaintiff's attorney in Court without sufficient authority.

3. The Plaintiff is stated to be an Alien Enemy & cannot make or authorise any person to make such an affidavit before this Court.

4 East. Rep. 402. Lebret. v. Papillon —

3. Bos. & Pul. McConnell. v. Hector

5 T. Rep. 23. Brandon. v. Nesbitt —

Stuart for Plaintiff. This question is improperly brought before this Court by motion, it ought to have been stated in a plea, as it affects the right of action of Plaintiff — It is not an exception to the regularity of the process & must not be made by motion. —

Hart & Co
Racey & Barlow }

Debt on Obligation.

X

Sullivan for Def't - The Debt is not suff: as it does not state that the Plff did discharge from Gaol the person for whom Def't became bound - This was the agreement and a condition ^{prev} without which the Plff could not have their action, & therefore became essential to be stated -

Ross for Plff - Statement sufficiently made

—

Robillard
Pilon — Cf

Action for value of certain articles of Rent & Pension -

Bedard for Def't pleads - That Plff cannot have a Judg^t for money, when articles are due in kind - the alternative ought to be given to pay in kind, or in money -

That the land given to the Def't is mortgaged & bound for the dower of the Plff's ~~first~~ wife, when dower may become due at which Plff ought to give security - By the donation it is stipulated that the Donee shall have all the goods effects belonging to the Plff at his decease - of these an Inventory ought now to be made & given to Def't without which this clause will be ineffectual as the Donee, now represented by the Dfr, will not be able to claim his right therew -

Sullivan for Plff. The Dfr. cannot complain of trouble until the Donee be open, & this may never happen - Ob. 702. - The gift of moveables was made to another person & not to Dfr. who cannot claim the same, although now in poss. of the land given by the Donation.

Ob. N. 73 -

—

Thursday 11th Feby. 1813. —

Allen

vs
Harris.

The Court were of opinion that the affidavit was irregularly taken by the attorney of the Plaintiff, as he appeared at the time to be an alien enemy & so stated on the affidavit.

The Plaintiff's attorney objected that the Defendant ought not to be discharged from the gaol until the expiration of 15 days, that the Plaintiff might have the benefit of an appeal therefrom, as by the discharge of the Defendant the recourse of the Plaintiff for the recovery of his debt will be gone.

The Court however were of opinion that the Judgment now given ought to be executed immediately.

Johnson Lambie
vs
Lebert.

On action for goods sold.

Plea - meat furnished by Defendant to Plaintiff - this made out by proof and by serment supplémentaire of Defendant and upon which there will be due to Plaintiff only a small balance of three or four pounds.

Order for Plaintiff contemplates that Defendant ^{has} not been made out in proof.

Wilson Robertson &
McDonnell

On Plaintiff's mo. for hearing on the merits -

Defendant objected that on the 8th inst. when the enquiry was closed he received a right to ex. Plaintiff on facts & art. and as they reside at Quebec he ~~has not~~ not hitherto been able to obtain such examination refers to case Hart, n. Jones. 16 Octo, 1812.

Boston for Plff. contends that this allows such application will be a retardation of the proceedings - cites case. McVey. v. Ross. June 1811, where similar application was refused. —

Burnside.
Chaubert.
Larault. Opp't.

Plff moved that Opp't be held to pay the costs of a former Opposition made by him to same effect as that now made, this in 2 days. failing which that Opposition be dismissed.

Vigé for Opp't. contends that the Opposition is not the same as that formerly made & which was dismissed. —

Burton
Manning

Action of Trespass for having entered on Plff's Seignory and there cut down wood. —

and
Burton.
Phelps.

Action of Revendication for recovery of wood cut down by Dft. on Plff's Seignory. —

Sol. Genl for Plff prays for Judg't on the evidence adduced. ^{for Plaintiff} The Plea set up by Dft. states that supp were granted, "à la charge de conserver & faire conserver le bois de chêne propre pour la construction des vaissaux ^{de} bateaux" which right is now vested in the Crown, & that ^{a Licence} ~~the right~~ of cutting down such wood was granted to Mss^r Idles & Co whose authority the Dft. cut down the wood in question — This

This reservation did not vest in the King the right of taking the timber, nor the right of property therein — The whole right of the Crown in the said Sieurries were granted to the Plaintiff, there is no reservation of the right of property in this wood in question. That in the same deed the Crown has reserved the right to build forts upon the land & to take firewood thereon, without paying any thing for it — which shews that the reservation in question of the bais de chene, was not to take it, nor to receive it without paying for it — The Grantor must explain himself clearly otherwise it will be taken up him even as King — The Grant was made by King as Sire Sugraine, not as King of France — by Order of Caws & Foret. — reserves here made are not of rights vested in the Crown, but a right of pre-emption.

2. The licence granted by the Crown to Idles & Co not sufficient authority to Defendants — it gives only where the King has reserved a right of the wood, and a right to cut it down — The contract between Idles & Co was for Marks & bowsprits, & the licence was granted thereupon & could extend only to that kind of timber, pine — & this could be cut down only by the authority of the Surveyor of the woods on his presence, the licence therefore does not extend to any other wood than Pine timber, ~~as~~ The Defendants ought to have produced their contract, as the licence refers to it, and it is a presumption against them that they have withheld it — the number of trees to be taken must be limited —

Objection,

Objection to testimony of John Mure as interested — without
his evidence there is no evidence of continuance of the license
from Scott Iddes & Co through Mure & Soliffe to the Defendant

Stuart for Dif^ds To prevent the difficulty respecting
the testimony of Mure an intervention was made by Scott
Iddes & Co.

The action agt. Manning is instituted in Jan^y. 1809 for
a voie de fait in cutting down the wood, the other action is
instituted agt. Phelps in March 1809 for a revendication of the
same wood, under which the whole of the wood cut down
by Manning was seized —

The cutting the wood justified as servants of Scott, Iddes & Co
under their License from Crown

Pliff has failed in making out his right, has limited it to
testimony that he was Sup^r in possession, in which he has
failed. — Pliff not having produced his title, the testimony
cannot apply but to the particular facts of possession —

That possession cannot avail agt. the Crown when set up by
a subject — Posts. Prescript^o 288. —

The King granted his license to Scott, Iddes & Co under his
privy Seal. the Substitution of Scott Iddes & Co to Mure &
Soliffe, is also proved, & the authority given by Mure & Soliffe
to Dif^ds is proved by producing Mure as a witness
this was further ascertained by Intervention of Scott Iddes & Co
who assume the responsibility of cutting the wood —

The question before the Court interests materially the rights of the Crown -

The Grants of the Surveyor in Canada are gratuitous and the reserves are making the most favorable construction the words in the grant, "à la charge"; means that the Crown reserved there things for itself - It was a thing not granted & the Plaintiff has no right in it - That the reservation of ground for forts & fire wood without paying for it, was necessary, as the prior part of the grant had given away the soil & this kind of timber - In the Surveyor of Subtrebois the bûche de chene only is reserved - Defd. gives up all claim to any other - The cutting the wood in the presence of the Surveyor of the Woods, was to secure the execution of the Contract to the Crown, & not for the benefit of Plaintiff - The Deputy of the Surveyor of the Woods examined to show that the wood was cut under his authority, & was the kind of wood contracted for - sworn copies of the contract produced by this Deputy -

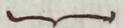
Sol. Genl. in reply - The question respecting two actions for the same timber has been already decided upon the Esqap' pleaded by Defendant -

No person can commit a trespass, even under authority of the King - but the question here to be determined is whether the King has given any authority.

The

The Surveyor General in his directions to his deputy has considered Pine trees only as coming under the Contract, and Plaintiff contends that the King's Licence does not extend to more -

The original contract not proved by Pike's Evidence



Desroches.
Sal n
Namur.

X

{ On action to render account -

Sullivan for Dfd. The Curator to Genevieve Robert misappropriately put in - this given up - It was stipulated by the marriage Contract of the Plaintiff's husband Dfd. was a party, that the property ought not to be accounted for until Plaintiff's ^{will} come of age - & that she is not yet of age -

Beaubien - This claim was illegal as the Defendant as Tutor could not stipulate any thing in his favor with his minor -



Terry.
Barber
&
Green opp.

{ On opposition of Green to effects seized -

Beaubien for Green - states that one Bezelow purchased the effects of the Defendant upon a former sale, could not pay for them, & thereupon Green took up the purchase, & paid the money for them, & the bailliff inserted his name as the purchaser



Gillespie.
Wadsworth
&
Stevenson Opp^t

On opposition afin de recueire of Stevenson -

Gale for Opp^t. claims articles found under balle & corde, as sold to Diffr. originally - art. Cont. 177. [#]

1 Pigeau 633

Port. Proc. Civ. 347.

Tete cont. note sur
l'art. 177. p. 386. -

Le Camus sur l'art. 181
2^e G. cont. p. 1052.
av. 24. & 25. -

Observ. sur l'art. 177.
p. 1344. -

Port. Proc. Civ.
part. A. ch. 2. art. 6
§ 4. p. 345

Also an Opposition afin de revendiquer certain articles
of earthen ware agreed to be returned, if not paid for in
a certain time -

Ross for Plff. Almonies have been paid by the Defendant
since the purchase of the articles claimed, & the presumption
must be that the Diffr. meant to apply such pay^t. for the
articles now claimed - The imputation of pay^t. is also
in favor of Diffr. or his creditors - To allow such claim
w^t. be allowing the Defendant to favor some creditors before
others -

Gillespie.
Wadsworth
&
Frost. Opp^t

On opposition of Frost as Tutor to one Adams
Wages as a servant, & damages for non-performance
of Contract - privilege for last year's service,
& his expenses to send him back to England
being part of his contract & part of his wages. -

Ross for Plff. The privilege extends not to clerks, but
to domestique. - The sum demanded is extravagant. -

Gale. Rep. de l'm. or Domestique. -

1 Pigeau. 633. - 685 - 686. -

Observ.

Gusson. X
v.
Henderson
&
Frost opp.

Savag. Gavt.
P. p. 324

On opposition à fin de détruire -
Rolland for Oppo. arts to Ju' Jdg't. in evidence
adduced. -

Beaubien for Plff. the Oppos't. claims under a title
under sens privé, but there appears no possession -

Georges for Gavt.

Chevallier
Raymond

Action of Debt on Obligation. -

Sullivan for Defd. The obligation was given upon
an erroneous statement of facts, & he is entitled to proof
of this erroneous statement. -

Beaubien for Plff. The work in question was finished
when the Obligation was given. -

Baulnes
Brisebois

Jdg't. to be drawn up. -

Deshantels X
Mayet. -
Mayet. op.

On opposition of the Defendant -

Sullivan for Dpp't. There is no Judgment rendered
on the day mentioned in the writ, the endorsement
thereon -

Bourgon
v.
Deshautels }

On rule to shew Cause why a pleading filed
by the Defendant should not be rejected
from the record.

Ross for Plff. The exception is to the ability of the Plff
to bring the action, & filed with a plea to the merits -

Vige for Defendt. The exception filed is not a la forme, but peremptorie en droit, which Defendant has
right to file with any other plea to the merits. —

Benny. - }
Robertson. }

action for wages. —

Boston for Defd. The Plffs are entitled to
a sum of money beneath the cognizance of this
Court, & therefore he ought to have his Forts -

Stevenson. - }
Carswell. }

Action for beer sold

Sullivan for Defd. The beer was bad. &
therefore Plff ought to be bound to take it back &
repay Defd. his money -

Charland
v.
Morin
Poitras. }

Action for breach of Covenant & damages -

Sullivan for Defd. Plff is only an agent & cannot
bring suit in his own name

Friday 12th Feby 1813. —

Witness-day. —

Saturday 13th Feby. —

Witness-day. —

PARK. — The Plaintiff proceeded to examine his witnesses, whose depositions were taken by an assistant Clerk of the Prothys' office, to which the Defendant's counsel objected & refused to assist. — The Plaintiff having examined four witnesses moved that the enquiry should be continued till to morrow which was granted. — This day the cause being called the Plaintiff produced another witness to be examined, but to this it was objected, that the witness had not been subpoenaed to attend yesterday, his name had not been called in Court, nor inscribed on the Role d'enquête, to entitle Plaintiff to such examination, but it appearing that the witness had been duly notified to attend the Court yesterday as a witness in the cause, and that he actually did attend, he was permitted to be examined although he had not been called in Court — no his name inscribed on the Role d'enquête. —

Monday 15th Feby. 1813.

Bryan & Duroches
Nathan

Judg. ordering Def't. to act - C^t. being of opinion that Def't. could not stipulate with the minor in his favor with regard to his property -

Daval
vs Dubreuil

P.V. of Experts - now -

Sanche.
Nadon.
Quinet &
Intenses

Interesses duly sum^d before Court - by rule & m^r.
Two visit - because Expert agreed on were dispensed with the summed
Office, which would not bind the Interest then not-pertaining to
the suit.

charland
Morin &
Poitras

Defend^s Excep^r dismissed. Pltf an officer appointed under
the Stat. Road act. See 40.

Robillard.
Pilon -

Papers left on table - for Pltf to correct his Replication -

Cusson
Henderson
Frostal off.
Savage. Gart

The oppositions admitted & the lots of land adjuisted to them -

Messier
Smith }

Parties admitted to their proofs on

Deshautels
Mayet }

The opposition dismissed -

Chalifoux
Labonté
Beaudin en
disposition & pas
Montplaisir
Mervé -

The motion of the purchaser rejected, & an order
for the foile enche granted -

Lesperance
McGinnal }

The defend^y Exceptions dismissed

Couselle
Raymond }

The errors complained of not sufficiently set forth to let
in proofs to destroy the act upon which the action is based -

Stevenson
Cawswell }

Judg -

Collins
George
George appr

a day in relation given for proof - the Court being of opinion
that the 14 days notice shd have been given -

~~Nelson v. Mc Donnell~~

Mo. to ex. Plff. on fact Larg. at Tucker Granted -

~~Robert
Lang~~

Writ agt. Lang - decl'n agt. Lang, Larg. mo. to amend writ by adding word Larg. rejected - as being another person - Defd's mo. to quash writ, granted. —

~~Sherie
Marion~~

Judg't - considering that the Defndt. did not give a valuable consideration for the seal, he is not entitled to demand the money he always to have p'd for it, nor to ask for pay't. of the improvements he put upon it, as he had no right to put them there -

~~Chapman
Pelerin~~

On Promissory note -

Note by Pelerin to one Wright - 11 Apr. 1811. payable 3 weeks after sight - endorsed to Plff 15 Augt. 1811 - Proof that Wright was indebted to Pelerin at date of endorsement in £12. admitted - on principle that the person who takes note after the cheque, takes it under all the defence of the drawer could make agt.

~~Bouyou.
Deshautes~~

Plff's mo. to reject Defndt's plea, over-ruled, it being an excus. per. in draft which destroys the Plff's right of action -

~~Jarry
Barber
Green app't~~

The opposition of Green rejected - want of proof of title in him - no replacement for mable - Deny and. v. mable st. 33. -

Burnside
Chaibert
+
Sarahult. opp}

X Pliffs mo. granted for payment of Costs on a former
Opposition made a few days earlier. —

Desirivres
Hatt - }

Interlocutor. referring matter in dispute to auditors.

Park - u
" Perry & al's }

Defor^s except: to taking deposition under order of the
Court on day of enquête — rejected & not allowed to be filed.

Campbell
" M^r Dowell }

Same exception — overruled — do

Ledue
" Mailloux }

Exception that Court had ordered cause to be set down
for enquête — rejected. — do

Bushy.
Woolman
Debardechz
opp^t

On motion to suspend the proceedings in this oppos^t
until another opposition made by same party be heard.

Bedard.
" Archambault

on Defor^s mo. to non-suit Pliff for not proceeding. —
Stuart for Pliff. It was an omission in the atty. to sue diligence
& contends that Pliff cannot be non-suited unless duly attended —
Rolland for deft. Rule of practice positive as to Pliff's procedure

Campbell
n
McCowell

} on Defend^t motion to reject from the record the depositions taken in the Cause, as the cause was not called in rotation from the rôle d'Enquête, & because, the deposition was taken in the hand writing of the Plff's Attorney. —

N^r Renaud
n
Renaud

} on Plff's mo.

Burlinquet
n
Campau

} Action for work & labor as a Carpenter —
Sol. Gen. for Plff. Report of Experts under order of Court
upon which he prays Judg^t. —

Bedard for Defd^t. The Report of one of the Exp. is in favor
of Defd^t. ought to be confirmed — The time not proper to ex- the
roof of house in question, as it was covered with Snow — The
insufficiency of the workmanship is also evident. —

McKenzie
n
Beaubien

} on Defend^t mo. for a new trial. I

Stuart for Defd^t. 1. The demand stated a demand of
only £300 ~~which~~ in the prov^t a sum transactions exceeding
£3000 were gone into — a balance of only £3+ might be asked
a suit in the Inferior Court & transactions of many thous^d gone
into — on demand here made another proved — irregular —

2. Plff. brought upon under an ex. on fact Lart. papers
which they had omitted to file agt. ought to have been filed
under the rules of practice. — The documents produced by Mr.

Mr Yeoward on facts sent, ought to have been filed with the
Rep. of Plff. -

3. Objection to sum of £218. 12. 10. for goods sold at £45/-
Cost on Sterling Cost - as the sterling cost was not proved
4. Charge of Compound interest upon the Plaintiff account -
no proof of an agreement on part of Defd. to pay such interest
5. No Jury de medecate lingua.

Ross for Plff. -

1. The action brought for the sum due to Plff. which
was the balance of the account filed -
2. The paper produced by Mr Yeoward was in support of
his answer upon the facts & article. -
3. Proof that prices marked on the goods was the Sterling
cost & so considered by the Jury. -
4. Defd. rec'd copies of the Plff. acct in qd. interest was charged
and did business in that way from year to year without objection

Racey.
Battersby {

on Defd's mo. to be admitted to bring up & surrender
one Wm Griffin for whom he became bail -

Ross for Defd. moved for an order upon the Sheriff to bring
up the body of Defend. he being now in custody -

Stuart for Plff. By order of 1785. the party entitled to the
benefit of the bail bond - when forfeited, no rule of this Court

can divest the right of either of the parties therein. the bond being conditional either to deliver the body of Dft^t. or a certain day, or pay a certain sum of money - this must be regulated according to principles of all other bonds or obligations under the law of the land - the rule of Prac. Sec. 8. art. 5 - cannot alter this - general law of land, by discharging this bond, after it has become forfeited. - Ross for Dft^t - says nothing -

Tuesday 16th Feby 1813

~~Bedard~~
~~archambault~~

Defend^t mo. granted & action dismissed -

~~Racey~~
~~Battersby~~

The Defend^t mo. for surrender of principal, granted

~~McKenzie & C^o~~
~~Beaubien~~

Motion for a new trial rejected. -

The count of insmul comp. held sufft. to support decdⁿ - The other points being founded on matters of fact which had been determined by the Jury. -

Campbell
McDowall

The defend^t motion rejected - it containing allegations not founded in fact, and being upon matters of practice settled by the Court upon which such allegations ought not to be allowed with a view of drawing a slur from the Court thereon

Stevens
Chamberlain }

IX

The Defend^t moved to fix the Cause for hearing on merits -
The Cause had been fixed for the enquiry on the 13th but ^{by the Plff}
~~when the cause was called neither any of the parties nor any witness appeared~~
~~no witness was produced on the part of the Plff~~ - it now
appeared that the Wit^r resided in the district of Three Rivers, and
notwithstanding all diligence had arrived too late to appear on
the 13th. This was not known at the time, but appeared now by the
affidavit of the witness - upon this statement the Plff objected to
the fixing the Cause for hearing & did claim another day for the
ex. of the Wit^r - ~~which was granted by the Court~~

Andrews & Fox
or
Fauste }

The Plff moved for hearing ex parte as Defd^t had not
filed a plea -

It appeared that the Cause had been fixed on the Role d'Enquête
and when called, the Plff did not appear, & it was so entered on the
Role - The Plff afterwards proceeded to examine his wit^r on the same
day but without any notice to the Defd^t. It was now objected by
Defd^t that Plff was precluded from proceeding, the testimony taken
by him was irregularly taken - But the Court held, that Defd^t
being in default had nothing to say in the Cause, & the Plff was
entitled to proceed at all times off him without notice, & when he
found it convenient. -

Monarque
Paxton
Juillet

Action for butchers meat sold £¹⁰⁰

Plff prays Judg. for sum aukno^d. to be due by Def^t

Bodequin
Lutrop &
Aubuchon
Melton

Action en Petition d'heredite'. ag^t Def^t as possessor
of the Estate of the late Community between Plff & her husband

Ross for Def^t. The action is irregular - it is ag^t Def^t
to render an amount of the Community which subsisted between
Plff & her late husband - this is a duty of^t belongs to Plff alone,
but is not imposed by Law on Def^t as he is a stranger -

Deshautels
Larose
Juillet

Action for lime sold £¹⁰⁰

Reambien for Def^t. The lime was furnished
on a Contract at rate of 3.10. per barrel, Plff charges 8 bars -
tenders barrel due to Plff -

Bender for Plff. The lime was not furnished upon
the Contract in question but for other purposes & applied
in a different manner from that stated in Contract. -

Hunter
Try
& Contra

Action on a foreign Judgment -

Ross for Def^t. The Jdgmt. was rendered in one of
the United States of America with which we are at
war

war, and it ought not to be enforced here - It is not authentic and cannot be received as such, -

Stuart for Plift. The Deft. shews no Suff. cause of Plift's action - a Judg^t rendered between two of the Kings Subjects ~~in the United States~~, may be enforced here - as to its authenticity it lies in proof to make that appear - Objects to an incidental demand formed by Def^t as inadmissible under 107 art Coul. it having no connexion with the demand in chief, - The Inc. Dem^t for damages for seizing Def^t's property in the States under color of an execution, - The principal demand upon the Judg^t was for debauching Plift's daughter - The Principal demand is now liquidated, and unliquidated demands cannot be set up even by reconvention. -

Hungerford
Lampman

} Action en complainte & reintegrande, u.

Ross for Def^t. Plift does not shew he was in poss. for a year and day, and therefore cannot maintain his action. u

Stuart for Plift. The poss. of the year and day is not necessary in cases of forcible ejectment or intrusion by strangers as in the present case - This poss. req^t only in cases of Saisine & nouvelleté, but not of reintégrande. u

Poth. Proc. Crv. -

§ 2. p. 105.

= art 96. Cour. no. 39. p. 1528.

Poth. Tr. Poss.

W 114. p. 560.

Denau
" Pinconneau

X

Action of Revendication for 2 Oxen.

Sol. Gen. for Defd. The Defd. does not refuse the Oxen, but as they have been claimed by another person besides the Plff, thinks Plff must make out his title before he be held to deliver them - Contends that the description stated and that proved do not agree - the one called Cendrier, or room, that proved being called blafatre, which is not same. — Contends at all events he ought not to pay Costs, as no sufficient demand was made of the oxen before bringing the action. —

Stuart for Plff. The Defd. as accidentally in possession of the Oxen, had no right to refuse to deliver them, or to make any plea to the action - he must stand to the consequence of his plea, & if found at fault must pay Costs -

Lafontaisie

clerk -

X

Action on Statute for a Dcit for

Stuart for Plff. The pleading filed by Defd. raises no issue to the action - the proper plea, was nil debet. In an action of Detinue of King v. Marston, - a plea of non cul' was held to raise no issue, & was rejected - but the Defd. pleads not guilty - that he hath not forfeited any money as allowed - & is not liable to pay damages in manner & form - all which is irregular & therefore demanded to be Plff.

Ross.

Ross for Dfnde^r - The plea raises a fair issue before the Court - the pleading is in conformity to the Statute q^t allows the general issue of non cul^r, and nil debt in this case -

Stuart in reply - The Statute refers to two kinds of injury the one respecting acts of violence & trespass, & the other the refusal of the remedy for q^t this action is instituted - & the two kinds of general issue stated refer to those different injuries, the one being properly non cul, the other nil debt & goes to show that Dfnde^r's plea is wrong -

Wednesday 17.th Feby. 1813.

Hungerford
Sampson.

Exception to sufficiency of Declⁿ dismissed. —

Stein
Chambulain.

The Defend^rs mo. granted. —

Reg. Pract. p. 48. —

Suff did not get any entry made
on Roll & inguite to witness him
to another day. —

Burton.
Ferguson
Delamare
mis en Cause

Upon the Pliff's mo. forolle enquire. —

The mis en Cause filed the Sheriff's deed to him for the
land soldo. —

mo. to quash writ, as 5 days service had not been made
writ served on the afternoon of the 12.th Marchable
this day at nine o'clock in the forenoon. —

Rains v Cote. Octo last. —

Lacroix for Pliff. Time suff^t allowed, as he has whole of day, return
to call Defendant. —

Stein
Chambulain

Pliff moved to ex. Defd. on faits & articles. —

Vige for Defd. On day of Enquête, no application
made for this examination. —

Motion rejected. —

Gillespie
Wadsworth
Stevenson &
Opp'ts

On re-hearing -

Gale for Opp'ts The thing sold presumed not to belong to the purchaser - etc. Donat - law 4. tit. 5. sec. 2. Dicta Deconfiture 2 Gr. Cont. 1368. -

Dation en paiement
rente. no 600.

On re-sale by Defd. to Opp'ts - contends that as goods are en nature they in & div'd. to Opp'ts - Defd. had the power to sell them goods to third persons, & also to his Creditor

+ Ross for Pliffs. Debt contracted in England by Defd. in 1811

Boucher 2415. a privilege de uiguer. ought to be limited to a time. -

2475. a pruscision of 3 months to exercise this privilege - according to Pothier's opinion. -

Bourjou. ve meubles - non & placis after sale, is no sale -

2 H. p. 689. Droit de Recouvr. une n l'acheteur en est devenu prop' -

4 Poth. N. 241. Recouvr. - Purchaser is presumed to become the proprietor after certain delay - to be settled auors to circumstances - the Silence of Creditor - not presents his debt when due -

a debt contracted in England - only privilege creditor has is to stop goods in transiter. Since a Prescot. 1 Atk. 260. - 252. -

2 Bos. & Pull. Miller & Ball -

3 T. Rep. 464. Ellis. - Stant. &c. -

Gale - Pliff. ought to have stated that sale was in England, otherwise what the law was in England - Sale stated to be in Montreal, nothing shown to the contrary -

King

Bingham

O.D. Counc. 1796 p. 11

T. T. Rep. 179-

A. W. Pleas. A. 94.

action of debt on Statute. —

Sol. Gen^t - action for Defd. having in his poss. contraband Goods.

Rolleau for Defd^t - no proof of any article except 8 lbs plug tobacco being found in his poss^t. No proof that goods were liable to seizure, nor have they ever been declared forfeited -

Sol. Gen^t certain principles have been established which will apply here. A. Went. Pleas. A. 94. Defd^t. had the key of the store where the tobacco was found -

Blunt

Hubbard

Dimes & Dimes.

Obl. No 410

action on security ent. into by Defd^t —

Sol. Gen^t for Defd^t No undertaking on the part of Defd^t to pay as original debtor - No proof of debt. aft. Wheeler & Smith - q^t necessary to be shown on act. of Defd^t as security for them. This is no sufficient discussion, an Exon. aft. moveable only - Defd^t has shown that Plff by his laches has allowed property of Wheeler & Smith to be made away with - had he done diligence he might have got his payt. from them -

Gale for Plff - Defd^t has not alleged want of discussion

Obl. No 410 - Creditors not bound to determine aft. Ct. N. 414.

Bergeron H^s

Bergeron
per

action en rescission. —

= nothing.

Church
Railey - }

action on promissory Note -

Sullivan for Def't - plea non-assumption - proof adduced

2 Poth. p. 187 to shew that note endorsed to Puff was conditional - 1. Chitty. 465

Bulky 123 & 126 2. Str. 733. -

Chitty. 261 & 268
291. 303

Stuart for Puff. such fact cannot be proved - it is an exception
dilatory, or of circumstances, which ought to have been pleaded specially -
beside, verbal testimony cannot be admitted to destroy a written
agreement - such as the instrument to Puff in this cause. -

Vallee
Guy - }

action on separation.

Andrews &
Faust. - }

Judg. drawn. -

Busby
Woolman &
Debartche
appt. - }

On opposition of Debartche. a procuration annulles le Decret.

Rolleau for Opp't. The writ under which the property
was sold is irregular. by Interloc. of 20 Oct. last the
Sale was ordered in a Cause agt. Thos. Burley, Curator, - and
it to wit at the estate a different writ from this Judg. was issued, under which
of Winklefoss in the hands of Mr. Deigniony in question was sold - the sale under such writ
is null - the signature was made in the hands of the Curator,
but the sale was made in the hands of the Executor -

Stuart for Puff. objects to the form of the present application.

The error is only in the recital of the writ, referred to, in the
various Exponens - the substance is right. —

Ross for Defd. - objects to the admissibility of the opposition -
Virge for Opp. - The opposit. is entitled to get a suff. writ under
the writs of this Court. Right duty of Court to see their writs
are regular and regularly executed -

Dunlops.

Roi -

C & contra

Action for goods sold. —

Virge for Defd: pleads hind^r demanded on another contract
for wheat. on which Roi asks for a discharge. —

Ross for Plff. Objects to admissibility of the incidental demand
a transaction closed & determined before the credit given -

Dufresne

Couselles

Action on account for a certain quantity of lime -
& also for other lime sold. —

Lavoix for Defd. delay to pay: action premature -

McGillivray

Sal -

Despres. Hdl

Action for Seiz^r Rights. —

Open for Plff. Loss upon donation & retrocession

Lavoix - no loss due upon Retrocession - nor upon donation
there being no tradition under it -

Georges for Garant - No tradition under donation -

No loss upon Retrocession. —

Campbell { Action on Promissory Note. —
McDowell }

Turgeon { One award of Practitioners -
Labelle } Rigé for Def't.

Prescription at. annus of Rente Constitue. —

double emploi - not so - the quitté of 300^l subsequent to that of 75^l
billab. ayt. qd^t Prescription was pleaded - has been allowed -
this^t demand not adjourned upon.

3. Bill of Particulars.

Thursday 18th Feby. 1813.

~~M. Arthur.~~
~~W. Donald.~~

Rule for attachment granted.

~~Maurice.~~
~~Mont.~~

Demurrer to plea. overruled.

Ridequin
Aubuchon

Interv.

Roi
Henshaw

Action for Interest on deed of sale -

Sol. Genl. for Defd. by transactions between the parties
the sum demanded has been paid, except a small bal^c

Beaubien for Plff. Plff has been exam^d on serment decisif
& the answers must be taken as decisive in the Cause. — — —

Cartier
Cheval
Deschantelets op^t
Grisé - op^t

On Rule to shew cause why Grisé shd not be reimbursed
in a certain sum - Granted by consent. —

Smith.
Hosmer.

Action to obtain poss. of a certain house sold to
Plff. —

Plff by Beaud. asks for Judg^t. as Defd. as being still in
poss. his effects being still there —

Georgen for Defd. The articles in house were forcibly detained
by Plff. —

Hasmer } Action for Damage -
Messier } Defd. has pleaded. by Excp. alien Enemy -
Gorgon for Plyff, submit Case -

McCord
Langan
Giffin }

On Rule to show Cause why Execution shd. not be granted
to Plyff for his Costs on the Indict. in this Court on
Octr 1808 - Cause appealed - to King & Council -

Henderson & Arnoux v. Duffenback. the Court of Appeal
reversed the Judgment of this Court, but did not direct this
Court to grant execution thereon - this Court in consequence
did not conceive itself warranted to grant such execution -
There no order is given for the execution further proceedings
here -

Bricault } The Defd. moved to quash writ, because the writ had
Vaillant } not been served five full days before the return -

The writ was served on the 12th. in the afternoon & was
returnable & returned into Court on the 17th at ten o'Clock
in the forenoon -

Lavoix for Plyff. contended that if the return was made
during the sitting of the Court on the 17th it was sufficient
therefore the return was sufficient -

Friday 19th Feby. 1813.

Bricault,
Vauclant }

Motion to quash writ for want of service, granted - the days of service must be made complete before the return - the return is directed to be made at Nine o'Clock on the 17th.

Burlinguet,
Campau }

Judg^t - ordering roof of house to be profited a ~~and~~ Expedit

Deshautel,
Davelui }

Judg^t for sum tendered.

Denau
Pinonmeau }

Defendant agreed to deliver up Oxen & Hay Cots - The finding of an article, cannot try title with the owner, but at his risk.

McCord
Langan
Gaffin }

The court declared they had nothing before it to shew what were the Cots taxed on the appeal, and had not the power to tax them, wherefore no Execution would be granted here for those Cots to be hereafter taxed - Rule for execution discharged.

Bursley
Woolman
Debardeur
expt. }

"
The decree set aside, as the writ under which it was sold is not conformable to the Judg^t ordering the writ prior to the former writs before sued out.

McKenzie & Co.

Deaubien:

Plff moved for Indict. on verdict. —

Dftⁿ says he has given notice of a mo. in arrest of Indict
this was given on the 17th — the mo. for a new trial having been
refused on the 16th. —

The notice not regular — too late — not entered on the
Judge's book. —

Tavernier

Walt

Mo. to quash the writ, the writ issued not being in
conformity to the order of the Judge. —

On Dftⁿ's mo. to dismiss cause for want of security for costs —
George for Plff. Security given, but after rising of Court —

Saturday 20th Feby. 1813.—

Dundop.
Roe. }
~~Incidental demand rejected.~~

Incidental demand rejected.

Tavernier,
Felt. }
~~Defendt no. rejected.~~

Wilson & Co
Pearlie &c }
~~Judg-~~

Robillard
Pilon - }
~~Except dismissed & Judg. for Off -~~

see Thibault v. Provoost & Marmur

Judg. 6th Feby ~~answ~~

April Term 1813.

Thursday 1st April. 1813.

Collins & al' }
Georgens }
Georgens Oppo: }

on Dft's mo. to ex. Mr Vigé, an att^r. in Court as a
Witness - and also to ex. on Samuel Park, ~~and facts~~,
articles, as being substantially the Puff in the cause

Objected by Puff, that Vigé has not been subpoena'd, he cannot
be heard, that Park is not named as a party in the suit
and cannot be ex. on facts articles. - That the Judg^t. have
been ob^t. in the name of the Puff, cannot now be controverted nor
any question raised respecting it -

Cartier }
Lemoine }
de Longueuil }

an Interlocutor to be drawn, same as in Case
of Terrier vs. DeLongueuil.

Friday 2. April 1813.

Trestler. - }
Hünster }

Facts & c^t. were proposed to Dfnd^r for last vacation, & served
personally - the Dfnd^r. did not appear on the day appointed
for the examination, but came in this day and offered to answer

Ferguson v.
Bouchette }

On Defend^t motion to quash process.

Defend^t sued as Garant, trader at Quebec - no special order of the Judge, according to the rule of Prae. in case of Defend^t residence exceeds thirty leagues from Montreal - but merely the signature of the Judge authorizing the issuing of the Writ. The writ was served at Quebec 24 March, ret. 1st inst.

Defend^t afterwards withdrew his motion -

Bergeron
Bergeron et al. }

action to rescind an act of Retrocession of 13 Mars 1811.

Bedard for Plff. Defd^t made don. 24 May 1809 to

Plff his son, upon certain conditions. - The wife of Defd^t died of the same illness of which she was attacked at the time the passing of the above donation - This was no sufficient cause of rescission of the act - Instead of a Donation, the act ought to be

+ cont. Vaut. N^o 612 considered as a deed of sale from the value of the articles to be paid

by the Plff - when this charge is above 10^{ft} Cent, it must be considered as a sale - Poth. Const. R^ont N^o 215. 239. 240. 241.

That the husband alone without the participation of the wife would have made the act of Donation, the property given, being part of their community - Poth. Com. 471. -

Other reasons for the rescission of the act have been attempted in the evidence besides that stated in the above act of Retrocession which is inadmissible -

That an error de droit, if the only ground of an act, may be come act by either of the parties - Donat liv. 1. tit. 18. It is in this

* Sect. 1. N^o 14. 15. & 17

= page. 166. -

Rep. de l'Assemblée -

Prud'homme. liv. 3. ch. 37. p 257.

Zaccombe. re Lods & Ventes
Pothier. Disp. part 2. ch. 1.
2. Vol. p. 58.

Dénovart. N^o Lods & Ventes
n^o 86. & 98 -
Rep. de l'In. v. Lods & Ventes

Where error is not the
only cause, the parties
cannot come after the act

Domat. liv. 1. tit. 18. sec.

1. art. 17. p. 141. Ignorantia Iuris nul prouest.

The Retrouement must
be presumed to be made
upon just grounds. Even
if no cause had been
ment. Die. de Droit

re Obligation - on
propre cause.

Id. v. Contract.

Art. 225. Husband may
dispossession of Community, but
it must be sans fraude,
now question at time of
last illness is presumed
to be with fraude. -

See also Poth. Comt.
N^o 480. where he cites
opinion of Lebrun. -

Domat. liv. 1. tit. 18. sec. 1.
N^o 14. 15. p. 166 -

Poth. Obl. N^o 42 -
Const. de Rente - 215, 239. 40.
Vente. N^o 612. -

-

care a Cause fausse -

Sacrox. sur Bergeron pere, submits to the Court. -

Vige' for other Defend^y. - all acts of Donation of this kind
~~Husband~~ between father & children have never been considered as deeds of
Sale - and so held. Rolland. Ex. v. Belavay 8 Febr. 1809. - The
Donation made by the husband jointly with his wife at the
time she is on her death bed, is a fraud in the eye of the law
upon the heirs of the wife, who are thereby deprived of all right
in her Succession. ^{art 225. Cour. art 314} The Retrouement was passed after every due
precaution by the notary Cabieu - see but -

2. M^{me}. Vige' of Counsel - Under art. 225. Sur T. N^o 30. Donation
by the husband during the last illness of the wife, considered as fraud -
and recompense due thereon by the husband to the heirs of the wife. -
The Donation is at all events null for one half. Dénovart.
re Donation. N^o 86. 91. -

Ross in reply - No fraud is alleged in the declaration as the
cause of rescission of the Retrouement - the only cause is the erreur
de droit - New matter has been introduced by the Defend^y / plea
and in the testimony to show there were other causes of rescission
besides the erreur de droit - Pluff? has made a motion to reject
this testimony, which Pluff now reiterates - Erreur de droit is
exusable in some instances - Erreur de droit, being fausse may be
relieved of. Rep. de l'In. v. Erreur. p. 69 &c The making of
a reticement by the Pluff presumes he had been legally vested with
the property, & that the Donation was considered by all the parties as
having vested with property instead of being a nullity -

That Bergeron alone has accepted the Retracement - which shews that he alone had the right to have made the Donation.
The Plaintiff could not have benefited by the death of the wife, as the pension stipulated in the donation was not diminished though.

✓ ✓

Bergeron &
Bardieu }
Bergeron
Pal'

action for recovery of damages, for having by voie de fait, proceeded to the sale of certain goods & effects in the possession of the Plaintiff. -

Papineau for Defendant The Plaintiff had abandoned all right to the moveables in question in consequence of the act of retransmission of the 13 March 1811. The Notary is not bound for the opinions he may give which may be prejudicial to any of the parties - Deny. vs Nullité -

Bedard for Plaintiff, contends that Defendants are answerable, whether the act of retransmission be valid or not. -

Saplante
Dorion }

action of assault & battery - tried by J. P. Jury. -

The Defendant called no witnesses. -

Verdict for Plaintiff £75 - & costs -

Saturday 3. April 1813.

Needham & Tal

Bourne —

M^r. that Plff's action be dismissed, as he has not complied with the Interlocutory order of the Court of the 20th Feby last, permitting an amendment of the declaration

N^o. 15 -
Bricaud

Vaillant —

on exception - as to addition of Plff - 2 Guinea, not deposited

Scheupre

Labadie

Léguay. Gart

On action petitio[n]e - & demande en Garantie
Bédard for Gart - that the writing given by Gart
to Defd. is null - & gave no right to the Defd. in the
property - This paper not double 1 Bonn. 470 -

N^o. 2. p. 471. 472 - there being no reciprocity -

Bédard also for Plff - contends that his title is good, being made by
an acte authentique from Léguay - this title ought to prevail over
the possession of the Defd. with an imperfect title - 2 Bonn. 471. -
acte sous seing privé

Papineau for Defd. - The Gart. sold^o to Defd. & deliv^d, possession
to him 10 years ago - this is an acte consommé, & not executory
or a promesse de vendre - l'ouvrage, ou vente. similar case -
D. vs Contrat. - That if the acte sous seing privé be not considered
as a sufficient deed of sale, it must be considered as a commencement
de preuve par écrit. -

Urge for Defd. The Defd. has had a poss. of 10 years under a
title, which is sufficient to convey the property -

Bedard in reply - The acte is not perfect or executed by the possession - the condition of the Sale that the D^ef^t. shou'd pay a rente constitutive, & a certain sum of money to a third, w^t have been without execution, if the house on the lot had been burnt and the D^ef^t. had refused to comply with the conditions of the Sale - in the case of Lebacqz must have been resorted to, which the law reproves in a case of this kind, shew's the insufficiency of the acte de vente. -

Leclaire
Desgranges }
Langevin opp^r

On opposition of Langevin, wife of the D^ef^t. in order to suspend proceedings on the execution sued out in this cause until a suit which she has instituted against the D^ef^t. for a Separation de biens. -

L. M. Vigé for Puff - contends that Opp^r. ought to have filed her moyens d'opposition stating the facts upon which the Puff may admit them, so as to enable him to proceed further against the D^ef^t. -

The Court seemed to think this reasonable, & the Opp^r. in consequence agreed to file her moyens d'opposition -

Monday 5th April 1813

M. 15

Bricaud.

& al'. {

Vaillant }

{ W The Defend^ts plea rejected. —

Needham

& al'. {

Durton }

{ W Defend^ts motion rejected.

Léheup

Labadie }

Léproux — }

order for proof —

Collinsal

Georgen }

Georgen off

{ W on Def^ts mo. to ex. one Parte upon facts & article, as
being substantially the plif in the Cause — suspended
until the other witness be heard —

Carby

Baker }

on Plif's mo. to reject an answer to Replication —

McCord

Languau

& al'. — }

{ W on Plif's mo. why he shd. not be permitted to fyle an
exemplification of the Indjt before the King & Council —

Objected by the Defend^t that it is irregular to fyle any
paper in any record before the Court, without assigning a Caus
for so doing, after to form further proceedings thereon —

Mo. rejected. —

Galipeau
Rock }

On action of defamation - trial by Jps. Jury. —
Verdict for £50 & Costs. —

Jordan. }
" Boisselle }
Rolland opp. }

On the opposition of Rolland, afin de charge — for a
rente & pension viagere.

Pliff contends that this rent cannot be a charge upon
the land — being only a personal debt due by Defd.
1 Pigeau. 731 — admits charge as to servitude preservée on
the lands —

Neglig for opp. The Pliff not entitled to contest the right of charge
being a stranger having no right on the Soil such as that of Seign.
or other privilege — Donation to Defd. by opp. & her late husband dated 24 ap. 1797
Debt of Pliff for goods sold & contributed long-temwards —

De Longueuil
Titus }

Action on a deed of Sale, for rents due to Pliff as Seign.
George for Defd. says for exp. that Pliff was bound to
have conceded the land a titre de redévance, & cannot maintain
this action — cites case of Terrier v De Longueuil —

Sol. Gen: This case not within the law. —

Ferguson
Lang

On report of Arbitrators - see evidence

Fitch
Ackert
&
E contra

On report of Arbitrators -

Principal action discont'd - Judg. to be ent. on the
Incidental demand.

Woolman
Salon

On rule N. why facts last. shd not be taken as confirmed
Stuart for Dif. submit case.

Tuesday 6th April 1813.

Bushy
Ms. Bushy Cw
Debarrache
Opp't

On motion of the Oppost. for a writ of posse of an Estate
purchased at the Sheriff's sale -

Stuart for Dif. - The mo. erry when as it does not appear
that the Defend. will hold posse - which is the only case allowed

by St. 1801 -

Wentz
Try
& contra

Judg. - admitting Incidental demands

McKenzie Hall
vs
Beaubien

On mo. in arrest of Judgment -

Stuart for Dif^t, No declaration filed on record -

2. No legal issue was joined on the incidental demand - there are two pleas to this demand, one to the County & regular, & the other neither to the Court or County & therefore irregular - & cannot be considered as determined -



Rex.
" Dupré

On Certiorari. -

Rolland for Appell^t. prays that the order of the Sessions dismissing his appeal before it can be set aside, and a procedendo ordered. -

Ross - No sufficient diligence done on the certiorari - appell^t kept writ in his poss. for a 12 months after hev. obtained it - That affidavits are not found in the Record of the Sessions as a ground of appeal, which cannot be granted -

Hans Prae. 34. When Court sees that Justice has been done they will not grant a Certiorari -

Davis.
Allison
& contra
and
Davis.
Hamilton
& contra

Plff moves for non. of report of Arbitrators -

Stuart for Dif^t Arb. have exceeded limits of the reference in regard of 556 Quills -

Plff has asked for Costs - when arbitrators have not allowed them -

Argued for Plff. The arbitrators have not determined on the Cost, & therefore Plff asks for them -

Wednesday 7th April 1813.

Needham
or
Burton -

X mo. of Defd. granted. - action dismissed -

Tingou
+
Labelle } Judg. on Report -

Blunt
+
Hubbard X Judg. dismissing the suit -

2 East. Haycraft. n Creary -

Johnson sal
Leb^t
E contra } Judg. -
" "

Smith
Hosmer } Judg. advising defd. to remove his effects from the Bluff house -

Rea
Vassal } Interventor - As to the plea of presump. the Court held that the
case did not come within the Code marine - without saying
that the Code marine formed part of the law of the Country -

Hosmer
McDonald } X action dismissed - in 4 East. Rep. 502. Papillon. n Leb^t -

Burnside
Chambert
&
Arnoldi opp +

On opposition of Arnoldi for his demand as a Doctor
to a privilege thereon -

Boston for Bluff - contends that Opp. cannot claim any
preference over the proceeds of the real estate after Defd.

as he ought to have claimed his preference on the mowables,
which have been distributed by Judge of this Court —

Henry

Bourre' for Opp't. Prov. on real estate as well as moveable. Revenue
tr. subrogation. N. A. I. — 2 Gr. Court art 125. n^o 10 —

Boston in reply. Rep. Inv. vs Privilege.

Wilson & C^e

W. Donnell }

action for breach of Covenant —

Stuart. No proof made of any damages — object to proof of 2^d
sum p^r to Defd^t as the verbal testimony only of Mr. And^t is given
thereon, when it appears that a written receipt had been given for it —
but not produced — No count to cover money p^r —

Boston for Plff^t contends that the proof is sufficient —

Danoereau

Dansereau }

On Inscription in faux — art. on the pertinency of the
moyens de faux —

Béard for Defd^t 1. No Inventory was made on the day ment.
on the Expte — nor is the exp. conf. to the original —

Bleubien & Stuart for Defd^t The moyens de faux are not pertinents
and if they were, the Inventory smatters there in nowise respect the
matter in contest between the parties, the act rendered by the Defd^t
to the Plff^t accepted by them render any enquiry into the form of the
Inventory unnecessary —

Toupin
Schoultz }

on mo. for ~~Leave~~ on a Judg. in the Court of Appeals -

Thursday 8th April.

and

Friday 9th April. } Witness days -

Saturday 10th April 1813.

Jordan.

Boissel.

Raymond.

X Judg. on oppos' that the land be sold subject to the rent & pension - the land in question having been given to the Dfd. and seized in his possession, who was the personal debtor of the Rent - the C. inclined to think that such right of charge w^t. not have been granted to the Opp^t had the land been sold on a ten aequo.

Busby

Busby

Debarbier

Action for Legitime. -

Papineau

Larocque

Lal

for Dfde demands that Fr. Larocque be put out of Cause as not liable to action, being an anterior donee of their common father - & that the last three donees only as having obt^d all the estate of their father

are liable to the action -

Bedard for Plff. the three Defendants are equally entitled to their legitime w^t the Plff, & it w^t not be safe to allow the prior donee to go out of the Cause, as Plff cannot reduce the donation made to the three other Dfnd. beyond the legitime to q^t they are entitled by law.

Leprohon
Poirier }

debt on Obligation -

Quest. if Plff ought not to pay part of the Costs, as he did not notify the re-conveyance of the debt to him before the action -

Bricaud
v
Vaillant }

debt on Oblig -

George ad^c on obl. dated 14 June 1810. - there is no proof of such debt before the Court. - own on Plff's mo. to annul. -

Toubert
v
Farnam
& Sheldon }

Inq. in appeal reversed
action on bail bond - nears an exception -

Stuart for Dfnd^r Plff has not stated in what Court he obt^t his Judg^r nor to what Court he appealed -

Sacoux for Plff. sufficient is stated to maintain the action -

Stearns. q.t.
22 Churts Year

Y. Geo. 1. ch. 21. sec. 9.
sus.

On Inf. ~~that~~ tea illegally imported - St. 7 Geo. 1. ch. 21. a

Stuart for claim - Rule adminis^r. of President Dunn, Tea
was admitted to be imported into this Colony by the way of the
United States -

1st. The matters of fact are denied - proof not sufficient. -

2. By Treaty of Com. in 94 w^r United States. art. 3. - the importation
of Tea must be considered as allowed - as there previously existed no
prohibition of the importation of tea into Canada, if it came from
Gr B - the prohib. of the Stat. was only sub modo - which has
been removed by the above treaty. -

Sol. Genl. for Informt - Tea never could have been legally imported
into this Province under the Treaty of Com. w^r America - the
prohib. of that St. were not removed by the treaty -

That Informt has made all the proof necessary, & Claimt. ought
to have shown facts to controvert it -

Ross of Counsel for Informt - The Proc. of Mr. President Dunn must be
considered as warning subjects of the infringing the St. 7 Geo. - The
treaty sec. 23. treatment of ships of war shows that Americans never ~~breached~~
the treaty - It w^r be destroying the carrying trade from the East Indies
to permit the importation of tea by the King's subjects by the way of
the States -

Stuart for Claimt. The treaty must supersede the Statute, as it contains
a permission to import into this Colony whatever might be imported
into it by the subjects of the King - Also orders in Council 1795. p. 3.
Tea in contempt of Legislation in levying duties to build & garrison

Campbell & Hall
Couns.

Jos: Roi
Wm Johnson

} Action for damages on breach of Contract. —

Plff offered to read two protests in evidence made at the instance of the Plff agt the D^ef^t. Objected to by Defd: that such paper cannot be read, must be proved by the Notary who made it — The Court over-ruled the objection.

Louis Roi - is a wood. merch^t that the price of boards was between 16 & 20 dollars per ft. in the year 1807. —

Louis Gauvin. In the year ~~1808~~ planks were worth 2/6 a piece since that time they have been sold for 1/8 - this was the price for which he sold them —

P^r. Fizette. That in 1809 he sold boards 2/ a piece, being choice wood that there is about $\frac{1}{10}$ of the wood of this kind to be found in raf^ts

Cs. Delorme - in the year 1808 he sold boards at 18 & 20 dollars per marlau & ^{marlau} planks at 1/8 a piece —

Jos: Leomte. In the year 1809 he paid £5.1 for choice boards for covering —

F^r. Mathurin - Inspector of woods —
D^ef^t re

The D^ef^t. offered to prove that he had been prevented from manufacturing wood by his mill being overflowed, & this under the stipulation contained in the Contract "si late, fors il ne leur arrivent aucun accident cause par les elements" — Objected, that this clause could only apply to the navigation of wood not to the manufacturing of it — But it appearing that the D^ef^t. was a manufacturer of wood

and

and used the parties had in contemplation the wood
manufactured by the ~~Pleasant~~ - quiet front, the claim
applies as well to the accidents which might arise in the
one case as the other -

11th Inter. mill was stopped the rest of the season -

repairs late in season before finished - some delay -

Geo. Platt. purchased ^{about} boards & planks in 1807 from Mr. Simpson
in p^t. 30th & h^t. In the boards & the planks 10 dollars -

John Robertson. Carpenter - lot board at 7 doll in 1807 - the price
of plank was then 10 or 12 doll: - The price in 1808 was nearly
the same, but rather dearer -

Gilbert Miller, Carpenter, boards were sold for 6 doll. in 1807
and planks about 11 or 12 doll. in 1808 they were a little dearer
the boards were about 8 doll. & the planks 14 or 15 dollars -

Isaac Shay - Carp. in 1807 - 6 to 7 doll. boards - 10 to 12 planks
in 1808 - a little dearer - about 10th of a hundred? - generally about
 $\frac{1}{3}$ to $\frac{1}{4}$ an cubic -

Neil Livingston - overflow mill in 1807. was not repaired till
free of the year - too late to make boards - 1808 the water came up
the corner of the mill - repaired late - Sup^t had great quantity of
snow logs collected -

Verdict for the Plaintiff

April
Monday 12th ~~May~~ 1813. a.m.

- Farrar } mo. granted to reject a ~~remonstrance~~ filed by Def^t
Baker - }
- Simpson } mo. for delay to plead granted
Liebermanns - }
- Johnson } X Judgment
Lukin - }
- Toupin. } action hyp. for arrears of rent.
Shoulder } Stuart for Def^t. The Plaintiff sues for money, which is not the
article due, being ^{articles} due in kind, there are no conclusions for them,
nor is it stated that Def^t. ever refused to furnish them.
r Tu. da, mot. fouillable -
- de Denivart & Rente. Lacroix. for Plaintiff. He is entitled to money for ~~all~~ ^{the} articles, being
obj^ts not to be furnished on mature. -
money due when thing
int^t p^t is kind at the
time of reckonance. - Ch. I. on obl. alternation - Plaintiff to ask all of them -
H. de arreages, 112 33. -
- Hecath } action of assump^t on Promissory Note. - A.
Barlow. } Verdict for Plaintiff £ 663. 9. 4¹/₂
- Normand } action of assault - trial by Sp. Jury. c
Caviller }
- Joseph Fournelle - Louis Pelleter
David Kennedy -
Alexis Prevost - was not present at b^r of Dep^ts -
Paul Pressac
- Verdict £ 40 - Cost

R.
McCard.
Langdale

Action for arrears of rent. —

Stuart for Defd. The action is unnecessary - the Judg. upon which it is founded being Interlocutory, and Pllf ought to follow up his remedy under that Judg. to account for the rents and arrears 'now claimed' —

2 Defnds. are not jointly & severally bound, there being no privity between them - They are liable under different contracts —

Ross for Griffin - Action founded on leases & parties thereto not before the Court - Judg. rendered a Oct 1808 was Interlocutory - & no new action could be made thereon —

Rolland for Pllf. The Judg. is final & no further proceedings could be had thereon - there was no conclusion in the action upon which that Judg. was founded, for Defnds. to account - & Defnds. cannot under that Judg. be held to account - The Judg. only reserves to the Pllf his right to demand the amount in consequence of the revision of certain acts made between the Defnds. The action is founded upon that Judg. under which Defnds. are jointly & severally bound to account to the Pllf for the rents & profits of the Pllf's estate which they have enjoyed —

Thursday) 15th April 1813

Deshantels
v.
Normandin

McKenzie & Co.
v.
Beaubien.

Colman
Baillou
Storrow & al
opp't.

In Bte Bertrand
tutor per
Joseph Voyager

X debt on Obligt
Plff moved to set down cause for hearing - as no wit^ts were produced
on day of Enquête - Defd. moved for continuance under affidavit - but
did not state what witness could prove - The Court, under plea of pay^t
allowed Defd. to amend his affidavit -

No in arrest of Judg. overruled -

on mo. of the Oppos^t for a continuance of the enquête, under
affidavit of the inability of a wit^t to attend -

Stcourt for Plff - The service of Subpona made on same day that wit^t
ought to appear - Opp^t. proceeded in the ex. of his wit^t - without
warning right to ex. any wit^t who did not then attend & according to
the rules of practice p. 50. sec. 14. it is now precluded -

on trial of action for seduction -

Marie Nadeau v^m Perrault.

Augustin Parent +

Defence -

Marie Le Chartrand -

Henri Perrault. f

Nicolas Perrault. f

Verdict

Wellenue
St Julian

} Action for prop^t. of repairs to a public bridge -

Bourré for Puff - action founded on a P.V. of G. Voyer -

Stuart for Def^t - The P.V. drawn up by the habitants was irregular as it deviated from the P.M. after G. Voyer - the reparation also irregular -

Bourré in reply. Art. 36. art. 19 - warrants the reparation upon which the action is instituted -

Stuart - The G. V. does not authorise the Reparation -

Robillard ^{deux}
Robillard

} Action for payt. of rente & pension - donation by Puff to D^r Robillard dated 7. Oct. 1809.

by an accord between
Puff Robillard & D^r. dated
5 Nov. 1811 - parties agreed
that as Puff & his wife could
not live together, the D^r to be
sh^t take charge of her & provide
for her maintenance in
accord. whereof Puff conveys
to give up half of the
pension - Puff's wife has
since rem^t w^t D^r. &
been maintained by him
yet Puff demands abso-
lutely no
rent. -

Rolleau. The rent due to wife of Puff under donation, it
has been paid to her - wife does not join in the action being
satisfied with the payt^t - Part of article demanded without
sh^t showing they are due under the stipulations of the act -

Vige for Puff - The husband alone can have the action -
The article, due de die in deum. - The accord stipulates an avantage in favor
of the wife during marriage to prejudice of creditors is null - husband must act w^t in operating
a voluntary separation between man & wife which is inadmissible -

Mottetot
Racicot
sae

} Action for money on deed of Sale

Bedard for Def^t - Def^t. does not owe sum demanded
having been under the necessity of paying more to M^e de Beaucer
than was ment^t in the deed -

Laurier for Puff, claim balance of £19. as f statement filed.

Rex
Esperance }
Desperance }
McGillis & Co }

action of Defendants as Plaintiffs. —

Stuart for Plaintiff in Guaranty — proof of sale by Defendant is complete — Testimony of Chabotille explaining the act he gave ought to rejected — Ordre des Mouillers — Chabotille Secretary of the Docks, the Commissioners who are bound by his act —

Sol. Genl — The paper given by Mr Chabotille is no more than a receipt for money — Sec. 6.7. of act establishes mode for giving titles to lands sold by Comm. on sale at public auction — The Secretary of the Commissioners had besides no authority to grant such a title —

Stuart — The act of the Secretary proves the convert of the Comm. as the legal organ of their acts. —

Gulipenn
Rock, S

On motion for a new trial —

Urge in support of the rule — only one Wit^t to the fact charged up Dr. Marot — not supported by Tureot — Chevalier not a competent Wit^t being in the service of the Plaintiff — Pol. Proc. p. 124. — The damages excessive —

Ross for Plaintiff — Testimony of Marot is not alone supported by others

Henan
Lalonde }

action of Trespass —

Thouin
Picard
Archambault
& Aymé-Malo
Opp^t

On oppositions -

M. Vige for Elz. Ayt & Malo. quest. of preference
between Oppositors - The Oppost. sold a land to Plff
her husband charged with certain rente - Opposition is
for 2 years arrears of that rente - ought to be preferred to
Plff, as Plff was a party to that act & bound thereby quoad the
Oppot. -

Rolland for Plff - The land sold is not the land given upon
which the rente was constituted - No plательment the Oppot. had
a droit & tige upon all the property of Marion under the
deed of donation so as to entitle her to her present demand -
no claim of any right-of-garantie of Plff under her act -

M. Vige - Hyp. is sufficiently stated -

Opp^t of M. Archambault - claim on his part to receive
from the Creditor who may take the money under the hypothesis
of distribution ^{to be} indemnify by the security he gave
upon the sale made by Plff & her husband of ~~the~~^a land to
one Mathieu to secure Mathieu of any claim under that
sale for the rente & pension - The oppot. right remains to
the day of marriage of the plaintiff with her late husband
and is in the same right of Mathieu, had he been troubled
for the paym. of the rente & pension -

Rolland for Plff - The Plff was no party to the act
of cautionment given by Archambault, & not bound thereby -

Kings in reply - The security given by Archambault was given in pursuance of an act by which she was bound to give that security - her promise to that act therefore not necessary -

Allen
Harris }

On excepts as to alien Enemy support action -

8 T. N. 166. Stuart for Plff - Plea insufficient - it ought to have stated that the Plaintiff was born out of the King's Allegy
8 T. N. 166 - Plea, not filed in time, not having been made d'ancien continuance since the declaration of War in June last -

su D'arrain contine^{nt}
2 Tidd. 762 Ross in Dept. Plea of al. Enemy may be made in tout état de cause -

Reese.
Marchand } same case -

Bricault
Vaireau } On Plaintiff moved to amend decl - cause argued on
10th when error was perceived Plaintiff moved to amend

Quorum for Dept - French v Stevens - June 1812 - Loubet
v Lamy - last Term -

Lamis v. Sutherland v Robertson - amendment after
argt -

Saturday 17th April 1813.

La fantaisie
Monk.

Action of debt on penal Stat. -

Stuart for Plaintiff. Plaintiff & one Parisien were confined in prison under a warrant from Mr. Brenton, Secy. to the Govr to keep parties till next day till examⁿ. Such warrant was illegal - Govr. cannot commit - besides no crime was statuted - Hab. Cor. more requisite - On first applicⁿ to the Def^t. stated that it did not appear that Prisoner was detained for any other cause - This was explained by a note to Def^t. and on 2^d application on 16th Nov^r that Certificate of Gaoler was not dated - both reasons ill founded - By Hab. Corp. act of 1787. sec. 10.^t Requires that application should be in writing - which has been complied with - The reasons alleged by Def^t. insufficient - requires a certificate from Gaoler that there was no other detainee of Plaintiff, was requiring before what must be certified after the issuing the writ - and the Certificate to the Gaoler's certificate, is totally without reason to have been demanded. —

Ross for Def^t. The Plaintiff must conform to established rules for obtaining his hab. Corp. - must be obtⁿ under the same course as in England - Handl. Proc. p. 73. an affidavit of circumstances must accompany the application for the writ of H. Corp. - in form of such affidavit, p. 579. — 3 Bl. Com. 132.

Mr.

+
2. B.M. 765.—
13 Oct. R. 195.

Writ does not issue as a mere matter of course - but circumstances must shew a probable Cause to entitle party to ask for the writ - Paper shown to Ch. J. was not a copy of the Commitment - it being merely a temporary order to hold Pris.[?] for examination - This was not a Commit. for a criminal or ^{dated & now} supposed Crim[?] matter as meant by the Stat. n Hub. Corp. Act - ^{Order to be detained} for one - applied on 14 for Hub. Corp - gave reason to presume there were other grounds of detention - No affidavit of Circumstances to shew how the party was entitled to the benefit of the writ. This reason of Ch. J. requirs. to know if there were any other cause of detention. — 2. Bl. R. 1824. — 6 T. R. 497. 7. T. R. 745.

1. Sh. 142. — Writ of H.C. are not grantable to a Pres[?] of war, to a Person in execution - an apprentice - an Impri^t under an order of Parliament - & others - & Plff ought to have shewn by his affidavit that he was not one of those persons to whom the writ cannot be allowed —

Sol. Gen^l of Counsel for Dfnd^t — On 31 Oct. last, by tent^y of McCord, 2 men were sent from the Lines, charged with having assisted the enemy in coming into the Province — ordered by Gov^r. to stand committed till care sh^t be examined — By Certificate of Gaoler, not clear, from want of date, that same might have given on the day Plff. was committed — the presumption was that Plff. was not then a Pres[?] or if he were, that then was some other warrant for his detention — a probable cause must be shewn for the writ — the ~~cause~~ granting the writ merely to reward the Pres[?] not warranted. see 3 Bl. Com. 132. —

25/11/111

Practice in this County - certificate has always come from the Sheriff of the copy of the warrant & -

King v Smith - Ave. March 1806 - King v.

a certificate there was no other cause of detention than that mentioned in the warrant of which a copy is given - Practice in England must be followed - when party cannot by his own showing be entitled to the benefit of the writ, it will not be allowed. 2. 13 W. 465. - The Defd. never refused the writ - his denial was conditional - only saying that he wished to be sufficiently informed of the circumstances to be enabled him to grant it - The Hab. Cor. act made for the benefit of His Majesty's Subjects - and Plff was bound to have shown it at he was one of His Majesty's Subjects - and if a presumption could arise to the contrary it must be taken agt. the Plff in this case -

Stuart in reply - It was not in the power of Defd. to make requirements which the law does not make - such as detaining the Prisoner - or other causes of detention certified - Defendants have confounded cases of treason or susp. of treason, or felony or suspicous of felony, with cases of a lower description - in the first class of Cases there is a discretion in the Judge to grant the writ & requires an affidavit of Circumstances to shew that notwithstanding what is alleged against him he is entitled to be bailed under a Hab. Corp - but in the latter class of Cases, no such discretion is allowed

the authorities
cited by Defendant
refers to those cases
at Com. Law, &
not cases under
the Statute.

to the Judges, the writ being ~~of right~~ and must be
granted upon demands[#] — an affidavit of circumstances
has never been required in this Country — The Queen might
have refused to grant a certificate that Plaintiff was detained under
any other cause than that stated in the warrant a copy of
which he gave — Every man presumed subject of the King
who lives in the Province — not necessary to be stated on the
face of the petition — Contends that Plaintiff is entitled to two
penalties under the proof adduced. —

Dugastal
Bourgeoistal

On Plaintiff's Petition for a Prohibition to J. de Gies & Le Gardeur
Commissioners for building churches &c aff proceeding to
levy a certain sum of money upon the Inhabitants
of the parish of St Jacques beyond the sum allowed by
the Judge of this Court of the 20th Oct. 1812. —

Coltmansal
Barlow
Storow oppo

the oppos^t motion dismissed — application ought
to have been made before the Enquête commenced — according
to the rule of Proc. p. 50. — See 15th

Trestler
Kinsler

action for monies p^c. for Dfndt. — on Sale by Sheriff
Stewart for Dfndt. Dfndt. purchased of Plaintiff, who agreed to provide
a Sheriff's sale to perfect the title — The note filed does not
mention the Defendant or state that it was for a debt due by him.

No proof that Plff. paid any debt but his own to the Sheriff -
Order for Plff. - The Defendant on fact & article admits
the payt. of the money for him by Plff. —

Heath
Barlow & Tal

} On mo. for a new trial —

Ross for Defd. - objects that a person interested
was allowed to give evidence in the Cause, one
Leslie of the Store of McNaught & Co who were
indorsees on the note, was admitted a witness in
the Cause for the Plff. to prove the handwriting
of Irvine McNaught & Co.

Motion rejected. —

McKenzie & Tal
Deschambault
Sort & Tal Inter.

} On the Intervention —

Rolland for Interv party - objects to the legality
after Execution sued out in this Cause - 1st because
an Inv. prop. was seized upon an Executor - Defd. as Captain
and Curator to Meed. Mr. Dufy. — The Defendant was condemn'd
as Executor only, and Execution could not issue ag^t Defd.
in any other Capacity - Exon ag^t Executor as real property
unquestioned - Now. Deny ab. v^t Executor - D'Her' court. p. 288. Seq.

4/1. ch. 2 §. 6.
Pigeon 727 ^{5th}
Pigeon 727 ^{5th}

The adjudicat^{ee} becomes a party to a Cause, and the rule upon ^{him} touching all proceedings in which he has an interest may be said to be upon any party in the Cause
Post. Proc. Civ. A. part. ch. 2. ^{sec. 5. art. 13. 14. 63. p. 496. 7. 509.} (and 1 Pigeon, 727. —
de ^{25. 26.} ^{25. 26.}
" art. 13. 6. 1. p. 512. 513. — see also 1 Pigeon, p. 631. 32. 33. 34.)

Ogden for Plff. — The adjudicat^{ee} here approves the Sale — the Interv^s party ought to have come forward before the Sale if he saw his property exposed to sale as belonging to the Defendant — Plaintiff moves to amend their writ by striking out word Curator and insert word Executor — to which Defendant and Purchaser consent, and the Interv^s party cannot object thereto under any right they may claim in the property —

Stewart for Burby, purchaser, the sale regularly notified & duly made — the doctrine of Supra non dominio, not applicable, no objection raised by the Interv^s party to the regularity of the execution as to the character of Executor or Curator in the person of the Defendant — In England such amendment w^o be allowed — cite, Conqueror ~~dig.~~ — Tomlin's 1st. 7.^o

27. R. 737. 2. T. Rep. 737. — Reps. ^{w^o} v^e amendment.
2. T. Rep. 43. 2 T. Rep. 737. — Reps. ^{w^o} v^e amendment.
English cases apply, from the nature and form of the writ of Execution — the Purchaser's title ought not to be affected by it, as public faith has been pledged to him & nobody injured —

Rolland — amendment in the writ — cannot now amend the notice given by the Sheriff, nor the nature of the title given by the Sheriff —

Atkinson
Perreault

Statements to be made out by the parties

McKenzie
Deschambault
Sorteau Interv^r

Memorial for sundry opponents - contends that the writ cannot be amended - the estate of Deschambault is in the first part of the writ stated to have been sold; and in the latter part it appears to be the property of Madame Daffy - it is contradictory throughout -

Berthelet.
Donegany

Action on award -

Stuart for Defd - Mr. Papineau, one of the arbitrators declined acting after hearing the parties, afterwards gave a report without ~~the~~ hearing Delile the other arbitrator and gave a report - By the Compromis, the third arbitrator must join in opinion with the two others -

Sullivan for Plff. 2. Part Not. p. A25. - Compromis is conformable to precedent - see facts stated in Papineau's affidavit

Deshautels
Lépine

On action petitioine -

Nicoll for Defd - Plff produces a bill in 1804. - Defd. is pos. 10 years before that time - Pth. prop. 323. 324 - this is the only bill plff produces - Gerard v Barret, when bill without power does not convey the property -

L. M. Vige le Def^t - The evidence shows that Leompte
the first husband of Def^t's wife constantly had the possession
& his widow after his death to the present day -

Bender in reply - The Plff's title states that he had been in
poss. several years prior to the date thereof - objects to the
validity of the proof of the culte sous seign produced by
Def^t -

Fraser. - } On Promissory Note
Portelance. } Plff moved for Luff -

Hamelin. } On Report of Experts -
" " }
Biroleau }
" "

Sol. Gen^e. for Plff - Exps. ought to have calculated produce of land
down to 1812. see objections of Plff -

Lacroix for Def^t That donation was rather a sale, has
P. more than value of it - ats Burnet & Poirier but Gran

Kerv. } action to obtain an indemnification for sale of rights
Lacroix } which did not exist

Vente. N 583 Beaubien for Def^t - Plff acquired droits litigieux - the
Def^t, as legitimate not bound -

The Seller of a droit litigieux, is not bound to garantir
that at the time of the purchase the Plaintiff was an attorney
should not make such a purchase -

Stuart in reply - Plaintiff had a right to expect good faith and
truth from Madame Lacroix in selling, vizt. that she was
a Syndicess & had rights as such to dispose of - That
Defendant is liable as having accepted the succession of
Madame Lacroix & acted ^{under} that capacity

Sauvageau
Coron -

{ Action for Sale of wheat. -

Plaintiff for Defendant - The facts sont. Show usury -
The wheat sold being 56 bushels to return 75 - Plea
non-assumption. -

Heneau
Lalonde

{ Action of trespass. -

Vige' for Dfd't's state they are Syndics appointed to oversee
the repairs of the Church - and by Dfd't's deed of Concessⁿ
his land is bound to supply wood for this purpose - The
Defendant having acted as Syndic, ^{under an act de Reparation} cannot be considered as
guilty of a voie de fait. -

Stuart for Plaintiff - No justification in the Plea of Dfd't. being

bound by an acte de Repartition. — Seignior cannot enforce such a stipulation in the deed of Concession in favor of the public. —

Leprohonval } Action for recovery of costs expended by Plffs, under a
Struthers, et al } certain deed. —

Sol. Genl. for Defd^s objects to the quantum of Costs demanded. —

Gauzelin } Action of Debt for bal^a on deed of Sale. —
Lepinhou } Bedard for Defd^t contends there is no issue — — — —

on 2^o Ex^cps. The sum demanded has been conveyed to Gouin by man & contract w^r Lee Gouelin Plffs. daughter —

Deed of Sale to Defd^t was never ratified by Plffs. wife —

Stuart to Plff — The son Gauzelin could not assign the capital as he was not proprietor of it — The ratification of sale not req'd — no transcript signified to Defd^t to this money —

Laforce } Action for house rent. —
Clarke }

George for Defd^t no right of action on Plff's own Statent

Monday 19th April 1813

This day a Commission was given by the Judges to
Tho. McCord to take affidavits under St. 48. Qw. 3. ch. 22
§. 5 - made perpetual by St. 52. Qw. 3. ch. 11. —

- | | | |
|---------------|---|---|
| Coupin | { | mo. for execution on Judge from the Court of Appeals, granted - |
| Shoulder - | | |
| Brousseau | { | Interloc - |
| DeLongueville | | |
| Dansereau | { | Interloc admits moyens de faux - |
| Dansereau | | |
| Decombleau | { | Judge - for 75 bush. wheat - on acre |
| Corriveau | | |
| E. Léonard - | { | Judge - on award settling areas grant - |
| Robillard | | |
| Olivier - | { | Judge - proof - |
| Robillard | | |
| Robillard | X | |
| Dubois. | { | proof - |
| Talon | | |
| Church | { | Judge to Puff - non-assumpit - |
| Raeay | | |

Mellot
Percot } Judg. deed of sale -

Leprohon
Scholes } Judg. in cont.

Whitney
Laroque } Judg. on award

Lafore
Clarke } Judg. Hause sent -

De Longueil
Cates } Judg. for Offf. no ground for defense -

King
Dufine } Judg. of Dr. less. confirmed -

Proteau
Laroque } X to publ. to publ. of Def's out of Cause - refused to adjudge them
after hearing on the merits -

Bricault
Vallant } X action on obly. date in Jan - mistake in dat: January - after
hearing - dismissed -

Gauvin
Leprohon } X Gouin wife appears to be interested, ordered that they be put
into the cause -

Heneau
Lalonde } X order for proof - Pleasur? in aff. to stay cause -

Gulpeau
Rock } No. for a new trial - rejected -

Dyman	X	mo. for a com. Recd. to the United States refund - ~ ~ + ~ ~
Mc Gillivray		
Couper	X	
Schoultz	X	Except. dismissed - action for money instead of article in kind -
Berthelot.	X	
Donegan v.	X	Action on award, dismissed - arbitration does not proceed together to the worth of the premises -
Willineuve.	X	
St. Julien.	X	Evection sponde insufficient - case sent back to the Superior Court -
Talor.		
Mc Gillel.		Action on guarantee, dismissed - Commissioners alone authorized to grant title to land -
Joubert		
Farnam	X	Except. dismissed -
King		
Bingham	X	Judge for double value of 8 kgs tobacco
Allen.		
Harris	X	Action dismissed -
and		
Reese.	X	d° -
Marchand		

Burnside
Chamberlain
& Arnold } X Privileges allowed to the Opp^t. for his demand, as there appeared
then were no moreable. —

Davis
Allison
& Conner } Just. are aware —

Heath
Barlow & Sal } X Plff moved for Just. on verdict. —
Def^r. say. he had given notice in a mo. in arrest of Just. to be made
to morrow. —
Plff - notice too late, ought to have been given on the day after the Just.
under last rule of Proc.
Def^r. now moved for a rule on Plff why the Just. shd. not be arrested
on 1st day of next Term. Plff agreed to show cause immediately —
Ross for Def^r. Venire not injured by Atts. — not filed. —
rule discharged. —

N^o. 8.
Bertrand
Lute &
Voyer } On mo. in arrest of Just^r —
Searched for Def^r. Two object in ~~abuse~~ and - one for damages
and one for filiation - Jury fixed on both points, upon ^{one} of which
only they had power to decide —
Vége, Verdict at all events must be good for what is correct —
scripture does not vitiate — Verdict is right in all its parts —
Jury must find the Defend^r. father of the Child before assessing damages
I heart - demand for maintenance of Child separate right from that
of damages to the mother - Then shd. be a tutor named to the child who
ought to prosecute for the maintenance of the Child — The Plff cannot

avail himself of verbal testimony given before the Jury
to establish the question of alibi to the Child -

Sunday 20. April 1813

McKenzie & Co.
Bentley.

Judg. on verdict -

Beck
2 Chats Tea

order for sale of tea. on consent of Prosecutor -

On Petition
of Dugay

order to communicate copy of Petition to Comrⁿ -

Milner & Co. - X

McCormell.

Judg. for damages - proof of £100. rejected as the
receipt for it which appeared to have been given ~~as receipt~~
not produced -

Gillespie.

Wadsworth
Stevenson opp^d

Judg. admitting claim of Stevenson. for a preference
on the estate of earthen ware seized sous baile soudre &
found in the poss. of the Defendant. -

f.

June Term. 1813.

Tuesday 1st June 1813.

Munro
Porteous
& Contra.

On Pltf's mo. to ex. one Chesson, under a right reserved by the Pltf on the last day of Enquiry - which was opposed by the Def't - who contends under 11th Sec. of Rules Prac. p. 49. by which a permission must be expressed on the Diary of Books of Enquiry to have such ex. q^t has not been done in this case - merely P^t that the Pltf reserved the right to ex. such title which is not sufficient.

Hungerford
Lampman

Def't. mo. to continue ex. of titl^o on 7th inst
objected - no reservation allowed by entry on Rule of Enquiry,
names of titl^o not inscribed thereon -
ans^r Reservation apparently made -

Coltman
Barlow
Storow & opp^t

On opp. a fin de conservier by Storow
Stuart for Pltf. objects to right of Opp^t to maintain their
opp. being alien Enemies -

Gale for Opp^t The exaps. made at a time when Opp^t were
absent in the King's Dominions & Subjects - have since left the
Country - The money levied ought not to be all paid to the
Pltf, the dividends claimed by Opp^t ought to be reserved to him -
The Treaty of Commerce of 1794 makes a reservation of the
debts due to individuals, & saves their right of recovery -

Stuart. The Opp^t were Enemies, & do not shew the King's Licence to
entitle them to their action -

Soubert
Farnham
Sal.

{
Plff. moved to fix Cause for hearing on merits -
Cause founded on a Recog. in appeal entered into by
the Defend^r. plea, nil. deb. -

Defd^r contended that a day shd be first fixed for enquiry
for proof by Wit^r -

19 Oct. 1811.
Plff ans. under rule, int^r. 19 Oct. 1811. th^e Defd^r ought to
have pleaded specially such facts or points of defense of
he w^t have been entitled to prove, but under a plea of
nil. deb. this cannot be admitted -

Wednesday 2 June 1813. -

Soubert.
Farnham

{ X Motion for hearing on the merits granted

Hungerford
Lampman

{ X mo. granted for vacation - the Court being of opinion
that all causes not concluded in vacation must go over to
next vacation -

Munro.
Porteous
& Contrae

{
On point of diligence done by Defd^r. to entitle him to the
ex. of our Charr - The S^r. Charr had been summoned &
did attend on the first day of the Enquête, but did not attend
afterwards upon the subsequent days of Continuance of the
Enquête - On this objected that Wit^r. ought to have been subpoenaed
on the last day of the Enquête, as the 1st See. Rule Prae. p. 50 -
The resumption shd have been made at the time of entering on the
Enquête on the last day & on every day the cause is called from it Rule.

Pliff. moved to ex. on Whitford as a wit. for him -

Objection, that he is an interested wit^t and further that the application to ex. him is too late, - he was ex. on the voir dire on the 1st to
Dec^r. last, nothing done since, whereas the application to ex. him
shd. have been made on the first day of the ensuing Term - more
especially as the reservation on the right to be heard was continued only
to next Term, which was Feby. last, and as the Difendt have gone
through their evidence -

Ans^r. The Difendt. consented to ex. his wit^t & to allow the ex. of
Whitford to stand over, and did proceed to ex. his wit^t on the 10th &
11th Dec^r. last -

Deshautels
Normandin

Mo. by Pliff to his cause for hear's on merits -

L. M. Vige' for Difendt. contends that he is entitled to obtain the ex.
of a wit^t before closing negociate, under reservation made to him -
particularly of me Bouquet. -

Charles
Stans

On Pliff. mo. to change conclusion of plea from
the County to the Court -

Dogherity
Hall -

on defd. mo. that facts & art. may be set aside as
irregularly served -

Pliff on the contrary that the facts & art. shd. be taken as confessed

M^r. Martin
Graham

on Plff. in pub. of Com. Roy =

Objec. that Deft. cross-interrog - were not annexed altho' tendered in time -

Plff. - Cross. Qst. were tendered too late - neither admitted by the Judge nor by the Plff. as reg'd by the rule -

Galipeau
Guertin
Bruneau
Garnish

On Plff. mo. to ex. Garnishee on facts last. -
Cont. till to morrow

Thursday 3rd June 1813.

Deshautels
Normandie

Deftr. mo. to ex. Mr. Bouquet. diligent suff -

Doecherty
Stale

X Defr. admitted to answer on facts last. on paying costs - service on Defr. was regular, but he is by law admitted to purge his contempt even after judg't. ag' him upon payt. of costs - Poth. Proc. Cw.

Alunro
Porteous
& contra

X Other Deftr. mo. to ex. Chasser, rejected, as it did not appear that any diligence had been done to bring him up on the last day of the Enquête. diligence to bring up the witness, being considered necessary to be done every day to qst the Enquête is continued - The mo. to ex. Whitford rejected, he being incompetent -

Charles
Storrs

Mo. rejected -

Turner & Tal

Kinsler

Kinsler opp^t

On op. afm d'annuler -

Stuart for Plff. Oppos. insuff^t no mention in the
opp. that the effects claimed & those seized are the same
Bender for the oppos. contends that oppos^t is suff^t -

Gauthier
Leduc

on demande en Garantie -

Laurier. Jr. Leduc. Plff en Garantie, moved that part of the
matter of excep. pleaded by the Garant should be rejected, not
having been made by ms. as it ought to have been, - regarding
the same of power

Bender for Dft^t the matter pleaded ~~are~~ of a nature to be pleaded
by Excep. Per. à la forme -

Coupin

Busby

Lacasse

Lacasse opp^t

On mo. for the Opp^t to obtain pay^t of a certain sum
of money upon giving security -

Sewell for Opp^t cites 372 art. Court - as authority upon which his
application is founded -

Millar & Parlane
Blanchard

on rule 11 in why Writ & process sh. not be quashed, by reason
of the irregularity of the service thereof - Copy serv^t being made
returnable on 1st April next. the original being 1st June.

Plff. moved to amend - Dft^t objected that he could not amend the copy
in the hearing of Df^t -

Saturday 5th June 1813.

Bingham
vs
Thayer.

} action of Assumpsit. —

No. by Df^t. that inasmuch as the Plff has not filed an exhibit stating the precise amount of his demand and a written notice to the Defend^t. thereon, that Defend^t. be not bound to answer the plff's demand, and that his action be dismissed —

Plff states, that he has rec^d nothing on account from the Defend^t. and cannot therefore give him any credit for any pay^t —

King
Talon et
lesperance

} action Petitione —

Sol. Gen^l. contends that Df^t. has made no title to land under Ind^t

Stuart for Df^t. King shews no right to the land

Normandean
vs
Bertrielet

} action of Assump. on bte of Exct^r.

L. M. Viqu for Df^t. Tender on 12th March
Process serv^e 16th — At return of Writ tender renewed
of principal, & costs up to service of process. —

Stuart for Plff. Tender imperfectly made —

Marotte
Montséjour } action for Rente & pension. —
vs
Defendt. made an inscrip. en faux ap. acte —

Toupin
Shouldz } action hyp^v. ag^t Defendt. as Detenteur of a land
Subject to the paymt. of a rente & pension. —
Stuart for Defd^t. Plaintiff cannot have an action for
money, as by the deed the articles are due en nature. —
That Defd^t. has made a tender of all the articles due
before return of writ, w^t the Costs — That Defd^t. was
never put en demeure, & therefore cannot be held to pay
in money —

Lacroix for Plff. Tender of certain things impossible
to be made, & was besides insufficient —

Ioubert
Farnam } action on Recog. in appeal —
vs
Stuart for Defd^t. The Decree is informal — Recog.
is illegal — the Costs in appeal not taxed —

Racey
Battersby } action on Bail bond —
vs
On demurrer to plea filed by Defendt —
Stuart

Stuart for Df^t. contends that rule of prae. permitting
the surrender of the principal debtor, is illegal, ought to
be so declared by the Court. That Surrender has been
irregularly made of the principal debtor in this Cause
instead of the Cause in which he was a Defendant at the
Suit of the Plaintiff - no Surrender in this Cause can exonerate
the Defendant -

Ross for Plaintiff. The Defendant is no party to the Suit
instituted agt. the principal debtor and cannot be held
to make any Surrender in that Case, but only in this
where he is a party -

Sweetman
Barlow }

On mo. for delay to plead -

Quest. as to sufficiency of affidavit -

— — —

Wagner
Seasdale }

Rule by Df^t. to quash proceedings for irregular
service of process -

Allowed to amend on pay^t of costs -

— — —

71

Monday 7th June 1813. —

Tuesday 8th June 1813. —

Debartzky
" Wmth {

Mo. to reject a joinder in demurrer as having been filed
too late —

Stuart for Defd^t no rule requires filing a rejoinder in 24 hours,
rule silent as to time of filing such papers — filed only pro forma
ought not to be taken off the files —

Lafontaine
" Monk {

action dismissed. —

Wednesday 9th June 1813. —

Debartzky
~~et al~~ Wmth {

Mo. to reject. Ground of Demurrer granted —

Bingham
Thayer {

It appearing that no notice was contained on the exhibit
stating the plff's demand according to the rules of practice,
it was ordered that the cause be suspended until Plff comply
w^t the rule respects P^r. notice —

Perrault
Arlaine
Baron &
opp^t {

on oppos^t of Fran^s Baron as Tutor to her minor
children w^t Dfd^t her husband —

Pliff
Beaubien for ~~Dép't~~ claims one half of the Emplacement
in right of her Com^t & part of the other half on behalf
of her Children as heirs of ~~Dép't~~

That Andre' Audaine, Dép't. was never ^{owner to be} owner of the lot
of land in question - does not suff to transfer the property
~~his brother~~ to ~~him~~ - He has always had the possession - the act made
by Dép't. not alone suff to convey the estate - it is fraudulent -
done after Juge^r of Dép't - & not followed by tradition -

Fr. Prop. N. 245.

Vent. 220.221.

~~Objection~~
Vige for ~~Dép't~~ The Dép't. was coproprietor with
his brother & the donation & renon: made by the widow
not having been insinuated, she had a right to take back her property
before it passed into the hands of a third person - The
usufruct is the only thing Dép't. entitled to, also $\frac{1}{4}$ of $\frac{1}{2}$
and $\frac{1}{4}$ of a $\frac{1}{4}$ parts of the whole, g^r - Pliff is entitled to sell -

Beaubien, Dép't. by act of 1802 ~~the Dép't.~~ became Prop^r of the shares of
Audaine ~~in~~ the land in question & is now the only person
in possession. —

Tetrovalo
Couture, Talⁿ
Roberge, Gart
Méd. Delorme
An. Gart

Action Pétitionne - by Pliff as heirs of one
amiable Tetro. -

L. clb. Vige for Dép't. The Sup^r. line is the boundary
of the parties - but as this line has varied at
diff^r times, the right of the parties has varied
accordingly - For a great length of time the blue line

has been consid^r. the line of descⁿ - Mad^r Delorme leaves made
a concession to Roburge by a P. Verbal w^t out any other title
and a possession under it, q^b sufficiently justifies the right of
the D^r p^r - The poss. of D^r p^r has been of 18 years under
the above P. V. q^b is a suff^t title - By l^s betwⁿ between
Winklifoss & Delorme in 18^r the S^r f. line has been changed
this ought not to change the right of the parties - There
is a prescripⁿ by title & 10 years poss. u fava D^r p^r even
admitting the minority of some of plff^s

Rollants for arriere Garant^s - the only right of Plff^s
depends upon change of S^r f. line - this not suff^t to
dispossess an older tenant - The title produced by Plff^s doe^s
not apply to land in question - is different from all the other
titles produced different from the poss. he has proved - At
20 June 1777 not authentic - two notaries have certified it
who by law are not entitled to hold the minute - The Prosecutor
of the Boileau ment^r if it is not produced - description
of land not conformable to the plan - P. Verbal of P. of 18
July 1772 is not produced, q^b is the best evidence - The poss.
proved by Plff^s is proved only by 2 Wit^s and in a different
place than the lot in question - Rocke e. Cottineau - 1806 -
a P. Verbal without other title suff^t to convey the property -

Ross in reply - Plff^s father acquired the land by good title, being
P. Verbal, under q^b he obtained & held a possessⁿ in the land in question
The title of Roburge insuff^t his P. Verbal never followed by any
title

The rents were never by ~~the Couture~~ & Blanchette until
after the time was established w. a view to help them take
possession the land - opinion of Domain Lord and a Surveyor
unquestioned -

Paris.

Robitaille}

an oppos. of Stuart a fil de conserva -

Stuart - demand limited to £70 on oblige

Stuart oppo

Boston for Pless - contends that Dft. is not in deconfiance
refers to possession of Sheriff - as an

Duvabax

Mme Dubreuil

for arrears of rent - & to obtain acct. of certain
moveables which remained in ^{her} possⁿ after her husband
death. M^r Dubreuil -

Bedard for Dft. The action for moveable prop. must
cease as she has delivered them to Pless before action - as
to Rente viagre - Pless cannot exact the whole of it, because
Dft. her husb^d has alienated certain parts of her Comt^e
property, one half of qth belongs to wife - & cannot give the
whole rent to wife - this the care here - avantage indirec^t.

art. 282.

Cont. Rents. 242.

Comt^e. 280.

The M^r Dubreuil by the act of 5 Oct. 1811 only makes over to Pless
her rights in the community, qth can be only the half of the
Rente. If Dft. pays more to Pless than they are entitled to
she runs risk of being called upon by the other heirs to pay
what belongs to them over again - As to wood not bound to
deliver it - being bound to deliver it jointly w/ Duvab, who has
been exonerated therefrom -

Rolland fa Plff - The person constituting the Rent not admissible to contest the right - The question already decided ^{in a former} suit between the parties - Dft: not discharged from payt. of award

Parker G & Co
McGill -

on acct. rendered

Ross fa Plff - contend that instead of 23. ^{and for}
there shd be 3820.17.7 w^t interest -

1st. Obj: - The uprise of

2^o £72 for 1st & C. to receive first.

on questi. of Int.

Obl. M. 168 sum

Beaubien fa Dft: By Judg. in appeal the Defendants are accountable only from a certain period, & therefore what they received prior thereto ought not to come with this acct. This the uprise in question made by Dft. ~~Plff~~ within this distict. as taxes been received prior

The charge of the Commission is accord^s to custom of merchants
Int not due by Law - Defds are complable -

Beaudouin
aux ~
Enos -

Debt on deed of Sale -

Bourret fa Dft: Dft: did not prove legally the
ext. caps. of. Plff. & Dft. not bound to pay but at the
age of majority of Plff -

Wilson &ab. -
Sanford, Cur
Sanford, Opp.
Sanford, Opp.
On opposition of Sanford for her rights
Stuart for Pliff - objects to certain objects allowed
to th. opposit. & which she claims by her opposition
being her chambre garnie & power to gth she is not
entitled, as being only a garni de survie, & the opposit^t
husband is not yet dead -

Rollands for Opp. the lit garnie is not considered as
a garni de survie, - as to Power, opp^ts asks only for
Security that it shall be paid to her when it shall
become due. -

Stuart - Purchaser of real estate alone right to ask
for security. -

Thursday, 10th June 1813.

Millar & Parlane
Blanchard
Pliff allowed to amend - Case of a Co. & the Defendant
supposed to be now in Court - the amendment therefore
cannot injure him -

Neyenstadt
Woolman -
Def^t. did not file plea - Pliff moved for ex. of Wit^e ex parte
on wit^e day, no proof was made, nor any reservation in
making it - This day Pliff moved to ex. Def^t. on facts last.
Objected, that this not have been reserved on day of Enquiry -
But Court held in all cases of default the party Pliff may proceed at
his diligence -

Wagner.
Seasdale }

On mo. to quash writ & Del^u. EE

Deshemel,
Marmier }

mo. for proof - objected that there must be a previous hearing on law respects validity of an act filed -

Robillard
Courville }

action for Rente & pension vague

Ross for Def^t - Plff's wife dead, therefore Def^t bound to pay only half of Rente, which he has tendered -

Bender for Plff, admits that Plff's wife is dead, but ~~states~~ entitled to ~~whole of the articles~~ - denies tender - order for proof.

Debartzky
Wentz }

action Petition -

Stuart for Def^t. plead misnomer - Def^t. called Eleanor Brinkman -

Rolland - Plea irregularly made - does not state that she is the same person impleaded -

Stuart. Plff having demanded to Excep: admits fact stated in it, therefore action must be dismissed -

Murray
Duclos - }

action of Reven dication -

On Plff's mo. to reject part of pleads. filed by Def^t. a. being made to exhibit, file, and not to declaration -

IIID

Richer
Bissonnette } action of Separation —
To see prop

Friday 11th June 1813.

Wagner
Decidale

Def^ts mo. dismissed — This mo. was decided by
the permission given to the Plff to amend his
declaration —

Saturday 12th June 1813.

Debarde
Wentz —

Monday 14th June 1813

Demurrer to Def^ts plea of Excep. over-ruled inasmuch as
the material part of the exception of misnomer pleaded by
the Defendant was well set out, and the Plaintiff could have joined
issue thereon —

McKenzie Tal
Deschambault
Sort tal Interv

The Court were of opinion that the Decret in question
could be maintained upon Def^t as universal legatee
of the late M^r Dufy, and that the additional quality
given him of "Curator to her vacant Succession" could be regarded as
superfluous, — they therefore discharged the rule for quashing
the writ of Execution & proceedings thereon — and granted
Plff's mo. to amend. —

Bidequin.
v
Aubuchon

On the 19th April last, the plff ex^r two wit^r, and reserved his right to ~~ex~~ a third w^t then absent at Quebec - The

Defend^t declined entering upon the ex. of his wit^r until the Plff sh^d have closed - This day the plff moved to set down Cause for hearing on the merits, without waiving any right to ex. of his absent wit^r or giving any notice thereof to adverse party -

Ross for Defd^t s^r he ought to have a day to ex. his wit^r if Plff. meant by his present motion to waive the right of further ex. on his part -

Bourret for Plff - Defd^t never produced any Wit^r nor procured their names to be entered on the Role d'Enquête -

Mo. overruled - Not necessary for party to enter names of his wit^r on role unless where he has begun his ex^r Defd^t not excluded from his day to such ex^r -

Nugent & Co
Sarrault -

An Defd^t mo. to be discharged from Gaol by reason of the non pay^t of his alimentary allowance -

Objected that no notice of rule had been regularly given to Mr Davidson, who acted for Mr Rheinhart, one of plff -

Searns
v
Donnellan

An Defd^t mo. to ex. plff on fact last.

Burd^t for Plff - The Interrog proposed tend to shew that Plff has been guilty of Usury, and he is not therefore bound to answer -

Burd^t for Df^t It has been settled in Appeal, and in the Case of Dorrons, v. Gariety, that a Creditor is bound to answer touching the value given & received on an Obligation, even at the risk of charging himself with Usury -

Langan.
Charpentier }

On action of Revendication -

Bender for Plaintiff prays Judgment on proof by him adduced
in the Cause. -

Bedard for Defendant says, he has proved a permission from
the Plaintiff to cut down the wood in question, therefore it ought
to be adjudged to Defendant as his property -

The Plaintiff in reply objects to the competency of the Writ
produced by Defendant to prove the permission in question -
Ambroise Charpentier, one of the W^rs is the Defendant's father,
Michel Gauthier interested - The Writ to prove Plaintiff's signature
uncompt^d as they do not know Plaintiff, and never saw him
write. -

Tavernier
Holt -

Demands for House Rent -

Stuart for Plaintiff - Defendant admits contract but says it was
made on condition of Plaintiff making repairs - but has entered into
the house, the contract is perfect & Defendant can only have his right
in damages against Plaintiff for any part of her covenant she may not
have performed - He ought to have pleaded the failure of contract by Plaintiff. -

Gale for Defendant - The action is stated to be founded upon a
Lease - but none has been produced to support it - The Defendant
in his answers to the Interrogatories admits there was a conditional
agreement, which Plaintiff never fulfilled & therefore the lease was
never complete - Conditional agreements, not binding until conditions
performed. 1 Pigeau, 244, 245. - Sousse. Tit. 10, art. 8, p. 124 - Answer of Party
on oath not to be denied. -

Dumont
Chesser -

action of arrears of rent - & for costs in appeal
Tax bills to be filed.

Toupin
Shouldz

Action for arrears of annuity

Stuart for Df^t rested defense on the Excep. formerly
pledged as to the right of action for money -

Richardson
Cur. App
Bordeneuve

action of Reunion -

Ross for Df^t says, Df^t has made improvement
on the land sufficient to entitle him to hold the
land -

McGillis
Robillard

action hypoth. on Judgt

L.M. Vige for Df^t prays delay till 1^r Oct. to
call in his Guarant. -

3

Tuesday 15th June 1813. —

Soupin
Shouldz } Excep. dismissed. —

McCord
Langan } action ag^t Langan dismissed — Plea of Excep. of
Giffin wife dismissed. —

Murray. } That part of plea which plead to the exhibit filed
Duclos. } rejected —

McKenzieal
Deschambault } Intervention dismissed to Court —
Cartier —

Bertrand. } on mo. in arrest of Judgment —
Voyer } mo. rejected —

McGee
Benton } Plff: mo: for a Contiaint ag^t the Surveyors. —
King Interests

Debarthez } On mo. to amend —
Wentle — } Stuart. Court rejected a mo. to amend in Case Goubert v.
Lang. 15 Feb^r 1813. —

Lester
Phelps
Ayer Opp^t

On opp^t of D. Ayer -

Gale for Plff. contends that there was no sale from Def^r to Opp^t - alleges Collusion between them -

Laberge
Telleur
Parisiem opp^t

L. M. Vige, says Opp^t, has no proof & prays it may be dismissed -

Bender
Prior

action for House Rent -

Bender for Plff - refuses to ex. of Def. on fact not for proof of his demands -

Beaubien for Def^r says that there is only £12. 5. 4 due -

Skeek
McDonnell
Wagner Opp^t

Ross for Plff - action de Revendication -

Stuart for Enters Party - Plff has not made out his title.
No proof of delivery to him by Myers - Wit^r for Plff all in his employ, & interested - can only have an action w^t Myers -

Ross for Plff objects to the testimony of Myers, as interested -
the Indians of St Regis sold timber to Plff - where title is made out by the evidence -

Tarver
Fasel
Baker

} action on Proj Note -

Rolland fa Def^t - Plaintiff gave no value for note - the consideration if any was illegal, & th^t pl^t had a knowledge chely. p. 67.
Beaubien fa Plaintiff denies allegations - contends that Def^t has had value for note, ought to pay the note -

Deshautels.
Normandin

} Action of debt on Oblig^r

L.M. Vigne fa Def^t. pleads money pr. on ac^t.
contents that a receipt for 30 dollars ought to be admitted as proved
Bender for Plaintiff Receipt for 30 dol. not proved -

Cormier
Bourgeois
Tut^r.

} action of ac^t-

Rolland fa Plaintiff agrees to nom^r of new Practitioners -

Beaubien fa Def^t. Plaintiff has no right of action, having no interest in the thing in contest - The intervention of Cartier goes to authorise Plaintiff to bring action in his name - this cannot be done - Collusion between Plaintiff & Cartier ag^t. Dispute - Right of Plaintiff not sufficiently set out in the declaration -

Rolland fa Plaintiff - The Plaintiff's rights can be established only by an action ag^t. her own children & for q^t. purpose the Def^t. was appointed their Tutor - The intervention of Cartier is in support of the action, which he has an intent to do altho' he has obt^d a transfer of her rights -

Ogden for the Interv³ Party - as Puff was interested in the party
she had also an interest in this action, & the Interv³ party alone could
complain of this -

Bramble - The intervention is variant from the demand in Chif

Garry
Normand

action of debt on deed of sale -

Sullivan for Dif^r. pleads, Lesson & outre mortie -

Bender for Puff - a Purchaser cannot set up plea of Lesson & outre mortie - acts authorise - Union part of the consideration
is a rente & pension reserve, a thing is its nature uncertain, and
cannot give room to the right -

Sullivan in reply - R. v. V. no 372 is of a diff' opinion -

Gauthier
Leduc -
Huneau
Gart -

action for Rente & pension or agn. -

Lavoix for Dif^r - no proof that horse demanded is dead -
the death of one of fouries must diminishes $\frac{1}{2}$ - except wood
so that $\frac{1}{4}$ only of the horse w^r be due if proof suff^t -

L. M. Vip - no proof of the decease of the woman -

Wednesday 16th June 1813.

Mur & Poliffe
" M
Mears & al

X Judg^t Cam heard C^r Fibig last -

Stearns. in
22 Chest Tea.
Dawson Claimt.

X Judg^t of Condemnation -

The St. authorise the Gov^r & Council to make regulations respecting trade between this Country & the U. States of America and under it, the President & Queen in Council prohibited the importation of Tea from the States -

Debt due
Wentz.

X mo. to amend the Defend^rs name, by substituting the name of, Eleanor Brinkman, instead of Catty Wentz -

Racey.
Batterstey

Plea of Demurrer, overruled - but as the malles of fact were denied, the Court did not dismiss the action, but allowed the parties to proceed further as they should see fit -

Stearns
Donnellan

X mo. to ex. Plifff on fact^r last, rejected, as no plifff app^d. to have been filed to support the facts to be enquired of -

Collins
Georgen
Georgen Opp^t

On Plff's application for a revision of taxation of his ~~lot~~
on an opposition made by Defd.

Charles
Storrs

Action on Promissory Note -

Stewart for Defd. Plff not entitled to the interest demanded
variance between Note declared on & that given in evidence -
not shewn or proved what the value of dollars in the State
where made, nor to what sum of money in the Currency of the
Province it will amount - The note is stated to have been
made in the Current money of this Province - the Note is
not so - There can be no other interest allowed besides what
is granted by the laws of this Country, as the note does not
specify any interest -

Bodily (2/3) Burn
Billany 1094

1 M. H.
Colburn & Gill
Adams 4

Gale for Plff cites 1 Prov. de lo Jan. 101. 2

Robillard
n
Robillard

Action for arrears of rente & pension.

Rolland for Defd. Renties p^r in saison convenable, this
must be at stated periods, unless a peremptory demand be made
for them - Plff ought to have stated & shewn what saison convenable
was - Plff has given up to Defd. one half of rente to maintain his mother
Nicoé for Plff. The giving up the half of rente w^r be a def. de biens

Munro
Nadeau
Porteous
Morisseeau
C contra } On action of account -
Bremerton for Pluff. The parties were Partners in trade
from 1799 to 1811. -

The Pluff was only the Clerk of the Defendant
under agreement of 1799 -

Stuart in reply, Defend. must be accountable as he has
rec'd. the proceeds of the trade -

Nadeau ^{on}
Morisseeau } action for double the arreys on a sale -
Vige for Pluff - The sale proved by oaths of Defend.
only he adds, that he had been deceived by the Pluff - which
is not alleged in the pleas - the only defence being general.

Stuart for Defd. The proof by Defd. answers on fact
articles, shows a conditional agreement, & it was not complied
with by Pluff - Defd. has brought up parol testimony to rebut
that adduced by Pluff, & it fully shows that Pluff has no
right -

Vige in reply, the fact proved by Defd. not having
been specially pleaded ought not to be rec'd. in proof -

Safouse,
Clarke
McNaughton
opp't. } on opp. of all' Naegleton
To see if there be a previous point of law to be
determined -

M. Martin.
Grahame
& Contra

action of assumpsit. —

Sullivan for Plff. contends he has proved his demand

Boston for Defd. mo. to reject Com. Rec. as made up too late without sufficient notice to Defd. Made out Cross-bill upon which Plff's counsel would not allow to be annexed to the Am. Rec. because not admitted by the Judges — whereas they ought to have been joined — The Defd. furnished the bill, Plff has been compensated for what advances he made —

Sullivan in reply — There is no variation ~~between the~~ ^{of the interest} bill offered by Defd. irregular — only one lost to support the moderate demands —

Boston — The action wrong — it ought to have been brot. in a Partner —

Gosselin
Lefebvre
Stevenson
Gouin

action for recovery of the principal of a titre Clerical.

Stuart for Plff. the right to the money is in the Plff, the transfer made by the Son was illegal —

Gouin swore declare they have nothing to claim —

Bedard for Defd. — The only question is perfect the last — The transport made by Gosselin is, by the man. Contract of his Sister & to get the Plff was a party, ought to bind him & gave rights to Gouin — therefore Defd. warranted in not paying the money till Gouin gave up his right — besides the demands of Gouin by his letter to Stevenson showed that

he claimed the money as his right -

Stuart - Youin asked for money under po: of atty from Plff. sufficient to warrant Def'ts from any injury -

Sanche. &
Nadon - }

On P. Verbal respects a Comis d'eaue. -

Gremet et al.

Bidard for Interesses - New report made, - rule nisi why it shd. not be born, with certain alterations,

Sacroix for Plff. contends that P.V. should be homologated as it is made -

Sewell
Reynolds
Reynolds opps

On opp's of Reynolds -

Gale for Plff. - The oppost. an alien Enemy

Dugas & al
Lafontaine

action to recover monies expended for the Fabrique
Bidard for Plff. says that practitioners should
be named to ascertain the demands.

Rolland
Jeremie

action for recovery of fees as att's -

Stuart for Dft. objects, to charge for defense Civil Suit, there being two Def'ts, it ought to be divided between them there being no solidite in this case - The charge for fees not to be prosecuted in this Court - charge for fees in the Inferior Court -

Gyden for Plaintiff - The D^r gave orders to make a sep.
defence for him in the Civil Suit - Costs have been allowed
for business done in the Criminal Courts - Fees also allowed
in the Inferior Court -

Bellows & ab'
Smith -

action of assumption

Plaintiff for D^r - Two of Plaintiffs are alien enemies

Gyden for Plaintiff - Plaintiffs are entitled to maintain the action
at least for their proportion of the debt demanded.

Beach
Milne

action on revendication, for 2 Open -

Gyden for D^r - no proof of Plaintiff property - Besides,
D^r never had the Open in his poss. - No demand
made for the Open - nor refusal made by Defendant -

Thursday 17. June 1813. -

Being Fete Dieu, there was no Court -

Friday 18th June 1813

Dugas ^{et}		
Fontaine	{	a Rule ordered to be made for resuming matters to <u>Oppos.</u> -
Turner	{	Exapt. to
Kinler		Oppos. dismissed - a day for proof given -
Kinler Opp ^t		-
Dishantel	{	X Indict. giving a day to Def ^r . to fulfill conditions
Lidde		of sale -
Richardson	{	Indict. giving a day to Def ^r . to clear remaining
Marchand		quantity of land specified in the deed of Conveyance -
Swell		
Reynolds	{	Oppos ^t dismissed
Reynolds Opp ^t		
Cohman ^{et}		
Bairlow	{	Apposition dismissed w ^t Justice opp ^t being an al. En -
Somers ^{et}		
Leprohon	{	X court to def ^r . up to filing plea, or else did
Parlier		

Charles X
Storess } Judg - Notes made at Boston - foreign interest allowed -
from the time it would have run in the County
where the note was made -

Gosselin X

Leprohon &
Stevenson
Inters

Judg. but w/ Carts to Dijon & Inter's party party - as
the Clift had acquiesced in giving up his right to Gosselin wife, &
had not made appear that Gosselin wife did not mean to avail
themselves of the right so conveyed to them until they were brought
into the cause -

Normandien
Berthelot.

X Judg. the bonds not suff.

Munro
Porteous

Judg. to amount -

Herv.
Lacroix

Exception dismissed

Beach
Miline

Cattle ordered to be delivered up to Clift, but without costs
no demand appears to have been made for them on Dijon -

Garry
Barber

X Comp. wa. ruled -

Tavernier
Holt

Action dismissed

Thomlin
Picard
et
Archambault
over Malo -

Judg-

Athénier
Carriagé

on defds. nos. to declare proceedings peris as
nothing has been done for upward of two
years - in Feb. 1812. an order for Com. Reg.
mt. in Oct. after -

Delormeul
Titus -

On Rule upon Sheriff to show Cause why
a writ of attachment shd. not be granted & the
for not having received an oppos^t a fin or
annullement from the Defnd^t. upon the execution
and out of him. —

The Sheriff contends that the present cause
cannot be granted even if in default - he can be com-
miable only in damages to the party -

Stuart for Dept - when an officer under his office
deprives the party of a right to which he is entitled the
attachment is the proper course - 3 Hawk. 276.

Lafosse
Clarke

Saturday 19th June 1813 a.m.

Waggoner
Hasdale

{ x Plea rejected as filed too late. —

Longueuil
Titus

{ x Rule discharged —

Adhemar
Corrigal

{ x action dismissed on Dft's. mo. for want of proceedings —

Ring.
Talon

Judg. to deliver up poss. of the land —

Wilson
Cazeau.
+
Sanford.
opp't

{ x Judg. supports claim of opp't —

Bertrand
Voyer

Judg. on verdict, but as no proof has been gone into to show condition of the parties, or what w^r. be a proper allowance for the maintenance of the child, no Judg. was given on that part of the demand —

Parker Gerrard & C^o
McGill & Co

{ x Judg. on acc^d rendered — ~~The question of~~ Intest prior to the demeure, or demand, not granted —

Burton
Phelps } an Intervenor for calling in the Att'y Gen't

Blackwood
Chamlin } ~~not~~ not allowed, on evidence that Dft. used to pay
Int. on ~~his~~ mailer dealings w^r Plff -

Burdette
Demarest } Parties to be heard on question of presumption
in the cause. -

Causes under deliberation

M Martin
Grahame
& contra

The Plff has proved that Deft. recd from
Wm McNaught & Co on his accts - the sum
of 5331. 5. white oak w^t 21 ft fort £533. 2
less - share of Cullins 2.5
530. 12
Deft. on his last accts has proved, say £440. 0. 3

Sangan
Carpentier

I think the Deft. has made out in proof
that he had a licence from Plff to cut the
wood in question.

Nadon
Morisseau

Action for double arrears -

It appears to me that the Deft. was led into
error by the representations of the Plff touching
the sale, by his asserting that Belan, to whom a previous
promise was made by Deft., had given up his bargain -
The only question is, whether this matter has been
sufficiently pleaded -

Rolland
Denau

Is the plff entitled to recover fees for business done in
the Inferior Court, or any honorable for business in
any Court. -

Bergeron
Bergeronval

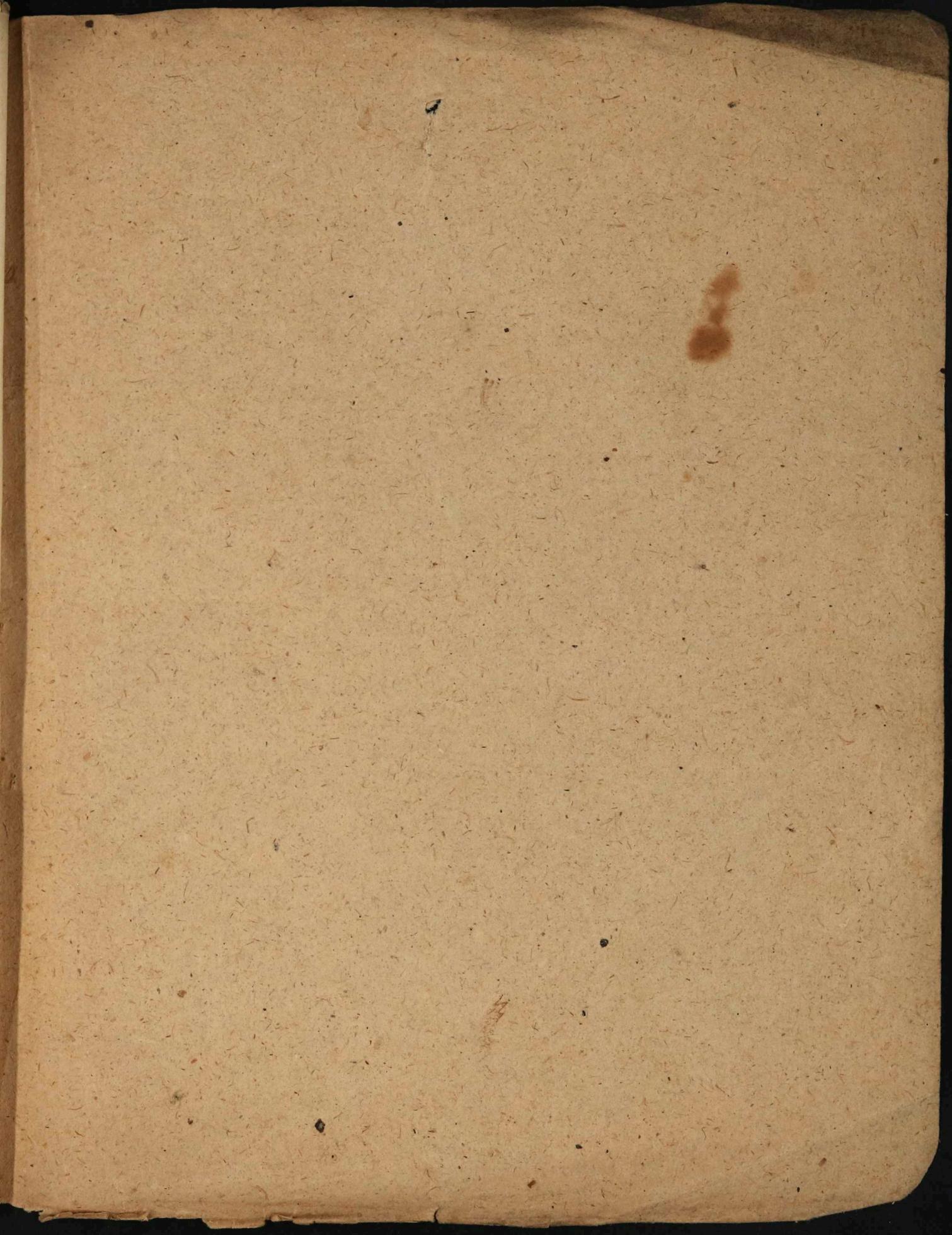
I do not see that the plff has made out

Duvalians
Desnoyers

The Plffs. are entitled to maintain their action
as holding right of action - Subream -
This being settled a day must be given to Dft.
to prove facts by them alleged in their plea -

Robillard
Robillardt

To get expl: of admission filed - whether
the amounts therein stated are of the whole
sum, or only of the half of Defd. admits
he must pay.



三

239