Kings Bench Montreal

Civil Pleas.—

October Term. 1813.—

February Term.. 1814.

April Term.— "

June Term.— "

~~October Term~~ "

October Term. 1813.—

Friday 1st. October 1813.—

Dumas.—
Burton.—
Potts oppt.—

The oppost. moved for delay to ppte reasons of Oppos.— as Defr. has assigned his property to Trustees for the payt. of all his debts.—

Stuart for Plff. Objects to any day being given, the delay being already expired in vacation— The oppost. cannot be heard on behalf of the Trustees, has no authority from them to act— Moves— as no documents have been furnished to shew any assignment of the property prior to the execution of the Plff and no tradition made in consequence, the oppos.t is ill founded and the opposition ought to be dismissed.— Opport. should have obtained from the Judge in vacation an extension of time to plead.—

Sol. Gen.l— No extention of time can be given by Judge in vacation—

Roi
Paré
Perrault opp.t

The Plff moved for delay to ex. Witt. in vacation — over to Monday.—

Meade.—
Bryson.—
Seminary opp.t

On oppost. mo. to reject the Plea of Defr. to moyens d'oppos.n of opposants— as not have been filed in time —

Wilson
Sanford
&
Sanford oppt

On Ogden's mo. to file suppletory reasons of Oppos^n in support of his claim -

Stuart - Objects that Cause is on delibere & no further proceedings can be had by any of the parties -

Stuart
vs
Conville

On Pltff's mo. for a day for ex. of Wits - for want of plea - Ross for Defr. - Plea filed 30th ult^o - not bound to file it sooner as Pltff had not filed his exhibits at return of writ - Pltff had to 10th July under rule of Court to file his exhib. which was done - & plea ought to have been filed in 20 days from that time. //

Saturday 2d October 1813.

Stuart vs Courville } Pltffs mo. granted. plea rejected as filed too late —

Lacroix vs Lessard } On Defts mo. for a peremption as no proceedings have been had therein for upwards of 2 terms. —

Ross for Pltff — mo. was granted on the 20th Febvy. last for cont. the Cause until 1st June last., since which time there has not elapsed a sufficient delay for granting the peremption demanded. —

McGillis vs Robillard } Question rspts Garantie.

Turpin vs Shoultz } Prac. — Defts yesterday obt. rule for ex. of Pltff. on fait & aut. on 8th inst. — he this day mov. for hears on merits the 9th — The Ct — rejected the mo. as Cause cannot be fix. for hears. until evidence is complete

Provost vs Plouffe } Rule nisi for Pltff
On Rule to shew Cause why Report of Prac. shd. not be homologated — & Pltffs action dismissed —

Lacroix for Pltff. The Prac. have rec. evidence in proof part of demand above 100th which is illegal — ought to be set aside —

Harris vs Clarke } Sol. Genl. for Pltff — action of Trespass & voie de fait for taking away by force some Cattle of Pltff —

Ogden

Douglass
vs
Cartier. &c

On Plff's mo. to set down Cause ex parte for want of a Plea –

Sol. Genl for Defts – The exhibits do not appear to have been filed in the Cause –

Ross for Garants, – the Cause is peric for want of proceedings & he will move to have it dismissed

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Nagenstadt
vs
Woolman

On mo. by Ross for Defs. for Delay till 10th to file his ans.

Monday 4th October 1813

Langan
vs
Carpentier

Action dismissed –

Pernaut
Auclaire
&
Baron Sal
Oppts

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Opposition dismissed with Costs: – It appears that the Oppos. had conveyed her right in the property to the Defendt in whose poss. it was seized – the subsequent act of 20 June 1805 considered fraudulent, & set-but not to prejudice the right of the Plff –

Bergeron
vs
Bergeron
Lull —

X action dismissed, the Court being of opinion that the deed of Donation by the woman was a nullity — by having been made at the time of her last illness, whereof she died. //

Nadon
vs
Morisseau

X Judgt. for £8 — the sum pd. by Pltff to Defndt. in consideration of the Sale, but as it appeared that the sale was made upon a Condition which had not happened, the Court was of opinion that the Defndt. was not liable to pay double the arrhes demanded — Costs as in the Inferior Court — The Court did not allow to Defndt. his costs of defends the action, as no tender was made of the sum really due. —

239.

Osborne
v
Finan

Ross for Defendt. offered bail to the action —
Stuart for Pltff. objected — too late as bail bond had been assigned and an action brought upon it. —

S. Maine
vs
Barlow

On Pltff's mo. for a day for proof
Stuart for Defdt. offers affidavit to put off day —
Gale for Pltff objects to the sufficiency of the Defts affidavits. —

Hall
vs
Smith

On Defdt. mo. for a Com. Roy. to ex. Wit. at Halifax
Pltff. objects — That it cannot be granted without an affidavit to shew that he has wit. at that place —

Roi
vs
Paré

On Defdts affidavit for a prolonged day for ex. of Wits —
Stuart for Opptes objects to sufficiency of affidavit. —

Perrault & Lamontagne for Opptes

Murray
vs
Duclos

Same application —

McCord
vs
Griffin & ux

Action for arrears of rent. —

Rolland for Plff asks Judt. on evidence adduced. —

the arrears of rent — also interest from the expiration of each term. Poth. Bail a Rente Nos 22. & 36. — Int. due from demeure to pay — this demeure ascertained by Judt — 20 Oct. 1808.

Ross for Defts. the Interest cannot be granted but from the day of demand in Court — the Judt. referred to does not regard the demand for rent made in this Cause —

Mabbut
vs
Mousseau
& Cuthbert opposr

Ore oppt mo. for a folle Enchere. —

Rolland for Plff. the purchaser — the Opport. cannot obtain this demand — he cannot have an execution for his demand which is not proved — The opposition is not à la Criée — it came in too late —

The opposition has been filed upwards of ten days & by the rules of Court stands admitted — Plff is a party to the suit & no other notice of this mo. necessary than serving on his attys —

Rolland
vs
Mabbut

action for fees. —

Burton for Defr. objects to charge for fees in the Inferior Court on the Quarter Sessions —

Tuesday 5th Oct. 1813.

Sweetman v Barlow — Mo. for ev. in Term rejected.

Trusdell v McGouth — Mo. for amendment of Defend.t name, to McGeoah granted.

Meach. — Bryan & Seminary oppts. — Mo. to reject plea granted —

Debartche vs Neyenstadt — Mo. granted for Vacation —

Wilson & al' v Sanford & Sanford oppt — Mo. to file a new Requête granted —

Dumas. — Burton. — Potts oppts. — Oppn. dismissed — Mo. for a Newd. exp. granted —

Gauthier
Ledieux
Husseau. Gar

Parties consent to Judgt—

Bissonette
vs
St. Michel

On action hypothecaire. —

Bedard for Defd. by Peremptory Except. pleads, That conclusions in declaration are irregular & not such as by law can be granted in an action en decl. hyp. — conclus. ought to be that Defd. should be bound to pay, or to abandon — but no conclus. that he be bound to pay — 1 Pigeau 593. —

Lacroix for Plff contends that the conclusions are sufficient.

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Quinet
Duclos.

Action on deed of Sale.

L. M. Vigé for Dfdt. He has not obt. poss. of all the land sold & demands damages by Incidental demand for the Difficulty the Principal demand ought be suspended till this be ascertained and a Survey ordered for this purpose. —

Hall
Smith

Action for Promissory Note—

Ogden for Plff has demurred to Defts plea of non-age, & contends that it is not sufficient to plead nonage but to have added that he is no Trader —

Sol. Genl — Not said that the Note on wh. action is brought was given in the course of trade and carried on by Defend.

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therefore plea is well pleaded – it not being necessary to negative what was not alledged of him. – The Demurrer of Pliff admits the fact of nonage, & still does not allege that Note was given by Defdt as a trader –

Ogden for Pliff. Defdt. by his pleading admits that he is a Trader –

The mo. for a Com. Rog. must fall to the ground there being nothing to support the demand. –

Wednesday 6th October 1813. –

Hall. v Smith. } Excep. dismissed. The Ct considering that the making the promissory Note was a mercantile transaction in wh the plea of nonage could not avail.

Osborne. v Finan. } The defendt was admitted to give special bail to the action – The Pliff alleged that he had prosecuted an action agt. the bail, altho' nothing appeared to this effect. – But the grants this mo. was not considered to affect the cause wh. to have been instituted agt. the bail or to stop proceedings therein. –

Bidequin vs. St. Martin v. Aubuchon } On action of Account –

Bourré for Pliff – Defdt. has interfered in succ. of Pliff's late husband – by his plea he has denied the fact – Pliff has by acts filed & evidence adduced sufficiently proved the fact to entitle him to his Judgt –

Ross for Defdt — Evidence adduced is not suffte to shew that Defdr is in poss. of any effects of the Community in question. —

Coutelée & al
v
Meunier

action for Rente Constituée —

L. M. Vigé for Defdt — The action is brot — Defdt as personally bound — but there is no act or oblign shewn by wh Defdr is personally bound to the Pltffs — it is only shewn that Defdr is in poss. of a land bound to the payt of a rente to Pltff — but this does not bind him personally nor can the Defendt be bound hypothecairement, as no conclusions of that nature are taken agt Defendt —

Mr. Duesnel for Pltffs — The action is brot. agt Defendt as personally bound — and sufficient is stated in the declr to shew that Defendt is bound —

McKenzie.
v
McGillivray
& al. ex —

Action agt Defdr to account —

Stuart for Pltff. as Defendts plea does not answer the whole of Pltffs demand, he has demurred thereto — the period between 1802 & 1804 during wh time the concern between the parties existed, no answer thereto being made

Sol. Genl

Over to Saturday —

Maranda
v.
Cousineau

action of account. —

over.

—

Dussault
v.
Lefevre

action of Debt on Sale of Land. —

Stuart for Defdt. refers to a receipt for about 500ℓ. on acct. of the demand not credited to him by the Pltff and an Incidental demand for non-enjoyt. of certain rights in the Islands in front of the land sold, which Pltff also conveyed to Defendt —

Ross for Pltff. — The receipt for 500 livres not authentic. The sale of the right is not binding for any thing specific being for such droits qui pourroient appartenir to the land, qℓ Defdt. may use as he best can — The droit d'Isle, attached to this land was sold by Pltfs father, & never belonged to Pltff. —

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Lanctot
v.
Lanctot
&
Raymond
oppt

On question d'ordre, on monies levied from the moveable property of Defendt. —

Rolland for oppt. says he ought to be collocated for the whole of his original debt although a part of it has been paid, and not for the balance — as the Immoveable property having been first discussed upon qℓ he had his mortgage, and the moveables are now to be discussed instead of having been first discussed &c. &c. Now. Denys Vo

Faillite. Nº 4.

L. M. Pyke

L. M. Vigé for Plff, contends that principle cannot hold

Dansereau
vs
Dansereau

Action to make Inventory & render Acct—
On Inscription en faux — of Inventory produced by Defendr—

Contr. No. 794. 798

Bedard for Plff— The Inventory ought to be made by an act Authentique, and closed three months afterwards— The proof of faux is made out by Witss. to have assisted at making the Inventory.—

Beaubien for Dft only insufficiency is that Counsellor, one of the Wss to the Inventory, has not signed it — objects to the testimony of Labadie, who has signed the Inventory, as being an incompetent Witness

—

Burnside
vs
Chaubert
& Sarrault Opt

On Plffs mo. that Oppt be held to pay costs of a former Oppos— before he be allowed to proceed—

Oppt. says that Plff has been pd under a Ludf Distribution.—

—

Wilson & al'
vs
Sanford
and
Sanford
Oppt

On demand to file a supplementary petition on part of Oppt— in consequence of the decease of her husband—

Stuart for Plff. objects to proceeding as illegal—

Trichette
v
Monjeon

On pl.ff. mo. that Defd. be held to change the conclusions of his plea from the Court to the Country

Stuart for Pl.ff. the transactions between the parties are of a Commercial nature —

Vigé for Defd. Parties are not merchants, nor are transactions of a mercantile nature —

Griffin
v
Griffin
M.c Cord
Opp.t

On Opposition à fin de distraire. —

Thursday 7.th October 1813. —

Witness-day. —

Friday 8.th October 1813. —

Witness-day. —

Hunter
v
Try —

When the Cause was called for evidence the Defds Counsel moved that the rule for the ex. of Ws should be discharged inasmuchas the Pl.ff. exhib. files &c. his declaration has been withdrawn from the Record by the Pl.ff. Attorney. This appears to be the fact, the Court granted the motion. —

Saturday 9th October 1813.

Wilson dal
v.
Sanford.
&
Sanford oppt

The Opposant, mo. granted for filing a new requete, in consequence of the death of her husband.

Burnside
v.
Chambert
&
Sarault Oppt

Plff. mo. granted. –

Trichette
v.
Monjeon

Plff. mo. granted. –

Ex parte
Campbell
on Petition

On Mr Sutherland's mo. to suppress & take from the files certain defamatory & libellous words filed by the Petitioner in his reply to Mr Sutherlands answer, and also certain words in the remarks of the Petitioner on letters addressed to him by Sutherland & filed –

Denichaud
vs
Marchand

Action of account. —

Bedard for Defdt says, that it is not correctly stated in the declaration that Jos. Planté was the person appointed as Curator, whereas it appears to be Jos. Bern^e. Planté. —

Genus dal.
vs
Lacisserayes

Action of account. — hearing on act. rendered
agree to refer matters to Practiciens

Maranda
vs
Cousineau

On ~~account~~ action of account

Bedard for Defdt says, that Plff is not entitled to her action for an account of the Community between her & her late husband, inasmuchas she had abandoned & left her husband in his lifetime without Cause cites —

Dic. For. V°. Fem: mariée
Com^n. Dun art. 229. n°. 10 p. 269
Journal des audiences tom. 3. ass. 20 Jan. 1672
Lebrun Com^té liv. 3. ch. 2. sec. 4. p. 530 n°. 31. 32. 33.
Journal du Palais t. 1. p. 1^er. ass. 1672

Stuart for Plff. contends that wife does not lose her rights in the Community by having left her husband but only her rights in those acts of liberality made to her by her husband — That the Community not being an act of liberality but a Common law right the Plff could not be divested of it in this manner. — But Plff could shew that she was compelled to abandon her husband from his ill-treatment.

Doue^s
Fer. loc. cit. art. 229 p. 269. n°. 11. 12

Dons à la fait
Lebrun Com^té p. 529.
Fer. art. 287. §. 2. n°. 15
Id. Dic. Droit V°. Donaire
Bourjon. Tom. 1. tit. 10. ch. 4. art. 5. p. 515. 516.

Ayet
vs
Pitt
} Case Judgt. 11 Oct. 1805.

Monday 11th. October 1813.—

Bergeron. — v. Cadieux. — Interlocutor for proof

Genus. — v. Lacisseraye — Interlocutor for Practicens.—

Quinet — v. Dudos — Interlocutor.—

On Petition of Wm. Campbell — The remarks of Petitioner upon the exhibits filed by him ordered to be withdrawn, as improperly filed.—

Turgeon. — v. Villiot. — & Garants — On Pltff's mo. for ex. of Wit. ex parte, as Defend. has filed no plea in the Cause.—

Georgen for Defr. The Defend. had delay allowed to him till the 9th. to call in his Garant, that Garant appeared on the 9th. and on this day obt. delay till 1st. day of next Term to call in as arrière Garant. ~~his~~ the

Lacroix for Pltff cites Case of Gauthier. v. Leduc & Hunter in Febry. last where it was refused to suspend the right of proceeding of Pltff. by reason of calling in Garant simple as in the Case here.—

Vigé. says he appr. in case of Gauthier & did not except a plea until after the Garant had been called in —

Jourdain
vs
Peloncau.

On action of Trespass. —
Order for proof. —

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Dumas
vs
Burton
&
Robertson, &
Tunstall opp.ts

On opposition afin de charge of Robertson & Tunstall
Stuart for Pltff, has demurred to reasons of Opp. of the
Oppos.ts — as insuff.t à fin de charge — because the
rights of Oppos.ants are merely hypothecary rights
and not of a nature to be a charge upon the land

Beaubien for Oppos.ts The estate of late Gen.l Christie
was bequeathed by him subject to the payt. of the legacies
claimed by the Oppos.ts — This estate came to the hands
of the Defend.ts & thereby charged wt. the legacies in question
it is a life rent to the Oppos.ts out of the Estate, which
is a charge upon it. —

Ref. to Jur. vs Oppos.ts —
2. Pigeau. p. 731.
4. C. Coût. p. 1390.
Dec.n Droit —
Vs Oppos.n afin de
charge. —
Dic. Droit. Vs
Substitution.

See also.
Demx.t Vo opposition
Nos 15. 16. 28. 29.

Powell
vs
Taylor

Action on deed of Lease. —
On Exception pleaded by Defend.ts —

111 11

Tuesday 12th Octr. 1813.

Turgeon. — vs — Elliot: — & Bowe, Gart

The Court rejected the mo. to proceed ex parte, as a day had been given to the Garant to call in his arrere Garant until the 1st of next Term —

Logan. vs Taylor. & Stuart opp.t

On application of Oppost for delay to file his reasons of Opposition. —

Pliff - states that Oppt. is too late in applying for delay, having had notice on the 4th. inst. to file his said moyens. —

Oppost. says he made his application for delay to file his moyens on the 7th. before the expiration of pleading was expired. —

Douglass vs Renaud

On Pliffs mo. to amend the Defendt name by changing it from Louis Reneau to Toussaint Raymond. — cites Tidds Prac. 632. & seq. — Respt 1st Demande ~~amendement~~ — 7 T. Rep. 698. Owens. v. Dubois.

Paris vs Carou —

Action on Recognizance in appeal —

Stuart for Defdt. says a day must be given for proof —

Wilson
vs
Moses
& Arnold Opp.t

Bourret for Oppt. says, he has made proof of his demand & is entitled to his Judgt. —

Beaubien for Pltff. - says. he is a Oppt.t Cr. of Defdr by Judgt. in this Cause, q.t is suffit. to entitle him to contest the Oppn.t — That the estate sold here is not that of Defdr, but belonging to Pltff, & therefore there is no right for Oppost. to claim, as out of the property of the Defendt — It was a decret Volontaire made by Pltff. to clear mortgages —

That Pltff has not followed the formalities requisite for a decret Volontaire, & the property must be presumed to belong to the Defendt — Proc. Civ. p. 480. & Cy. Cout. 1431. 2. Nr. 22. 23. — p. 1435 & seq — That Pltff cannot have the monies, as they appear to be due to him jointly with another

† 1. Proc. Civ. ch. 2. art. 14. p. 505.

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Nr 259.

Seodelstal
& et Blake
vs
Poitras & Hyp

Action on promissy Note —

Stuart for Dfdr. — Not stated in Dec. that wife was authorised by the husband to make the Note — otherwise not binding — Not stated to whom Defendt promised to pay — either to Pltff — or to late Dr Blake —

Lacroix for Pltff — Not necessary on a promissy Note, that the wife be authorised —

Toupin
v.
Shoultz

Action for arrears of rents & pension. —

Stuart for Dft. has p. the one half as appears by admission of Pltff on faits & articles — Pltff ought not to have costs —

—

Donv. Rex
vs
Demers —

On rule to shew Cause why Certiorari should not be quashed —

1. Because no cause or grounds were shewn to the Judge for granting the writ. ~~was laid in the Petition~~ —

2. Because there were no sufficient ~~proceedings~~ notice to Justice of application for the writ — Hands Prac. 34. Wms Just. Vo Certiorari. Sec. 7.

3. Because Writ issued in Vacation without authority — not having been signed by the Judge granting it — and it should be indorsed upon it at whose instance it is as granted — Wms Just. Vo Certiorari. Sec. 3.

4. The party prosecuting the Certiorari was not bound in the Security or Recognizance to prosecute —
4. T. Rep. King. vs Bowie — King. vs Stevens Feb. 1810

See also. King. vs Dun 8 T. R. 217.

Sol. Genl. for Dfts. Proceedings before Judges in Vacation were regular

1. 2. That notice was given to the Justice — & affidavits of the circumstances shewn at the time of granting the writ. —

3. No authorities to shew that writ shd be signed by the Judge — Salk. tit. Certiorari. & only necessary in cases of Certiorari for Indictments. — 1 Salk. 150. Reg. vs White. —

4. Security is suffe.

Wednesday 13th Oct. 1813.

Witness-day.

Laberge vs Tellier & al } On rule ag. Defdt., and one Parisien, as gardien of effects seized, why an attach. sh. not be grant. ag. them for not representing the effects of the Defend. taken in execution by Plff

Stuart for Dfdt., says, that the effects seized were not committed to his charge, and he cannot therefore be liable to any contrainte for not representing them, such Contrainte can be granted only ag. the Gardien who had the legal custody of the s. effects.

Ross for Dfdt. Parisien Gardien - Says, he is ready to deliver the effects to the bailiff, and that Defend. was the person who with-held them.

Thursday 14th Oct. 1813
The Court directed the Sheriff to receive from the hands of the Gardien the effects in question, & to make a return thereof to this Court to-morrow

On Petition of Hon. W. Campbell } On Petition of Hon. Will. Campbell, prays that the appointment of D. Sutherland as Tutor to E. Robertson the grand daught. of the Petr., sh. be set aside, and a new election had

Stuart for Petr.

1. The Grand father, being the nearest of kin to the minor, is alone entitled to the appointment of Tutor.

and

and election sh^d. have been had without his participation

Cites. Rep^x de Juris. V^o Tutelle. p. 312 — the doctrine there applying to the grandfather & grandmother. — see also. p. 316. 318. 319. —

Poth. Traité des Personnes. tit. 6. Sec. 2

Pract. Fran^s. de Couchot. 1 Vol. p. 350.

Mesle. Tutelle. p. 257. 279. 281. —

Domat. p. 173. —

2. That the non-residence of the Pet^r. is not a sufficient objection to his appointment. —

Cites — Cujas. lv. 4. p. 596. —

the distant residence of the nearest relation may be an excuse for not being appointed, but not sufficient to exclude him. — cites. Mesle. Tut. p. 95. and. 267. — Domat. lv. 1. tit. 1. Sec. 7. art. 31. p. 189. —

3. That M^r Sutherland has thrown unnecessary obstacles in the way of the petitioner's claim, and is actuated by motives of personal resentment. — Refers to the correspondence — Such person by law excluded from the tutorship — cits Mesle. p. 251. Domat. p. 186. — Charges Sutherland with duplicity of conduct in obtaining the appointment, under the pretence he used. —

Ross. for Sutherland

Contends. that all letters written by him shew nothing of design on his part, but on the contrary a strong attachment to the welfare & interest of the Robertson family. — Has been ill-treated by Petr.

That Mr S. having been regularly & legally appointed Tutor, he cannot, nor ought not, to resign that appointment upon the request of the Grand father who cannot deprive him thereof.

1. Because the Tutor is dative — and relationship although it may have a preferable claim, may still be set aside where the Judge sees fit to prefer a Stranger —

2. That the Tutor should be named & appointed by the Judge of the domicile of the father of the minor, and should be resident within that Jurisdiction of that Judge, so as to be amenable there, for his conduct. Cites. 1. Domat. tit. 1. Sec. 2 N° 3. —

3. That the Petr residing in another Province out of the Jurisdiction of this Court, is an improper person — as there will be no controul over him, either in respect of the person or property of the Minor, by this Court, to whom alone that controul belongs.

That

That the laws of this Country make provision for the appointment of Tutors to minors, whose nearest relations are in distant Countries —

cites. Declaration du Roi. 15 Decr. 1721. — 1 Vol. Edits & Dce. p. 399. —

Decln 1r. Octr 1741. maniere d'elire des Tuteurs p. 512. art. 1. 2. 3. —

Decln 1 Fevr 1743. touchs appointmt. of Tutors to minors havs property in this Country and in France. —

4. That it was necessary for the Exers to proceed without delay in making an Inventory of the Estate & effets left by the deceased N. Robertson, previous to which an appointment of Tutor to the minor became necessary, that she might have a legitime contradicteur to represent her at that Inventory —

cites. Repn de Jur. Vo Executr Testre p. 160. —

Bedard — on Same side —

As Tutelles are dative in this Country, the Judge had a right to appoint a Stranger where there was no relation within the Jurisdiction — That Mr. Sutherland havs been regularly appointed the Petitioner cannot divest him of his appointment — That the distant

residence

residence of the pet., living in another Province excludes him from the tutelle. cits. Mesle. 336. Lacombe. Vo Tuteur. —

Stuart in reply. — The Pet. being nearest of kin, although in another province, was entitled to be called to the election of a tutor to his grand child. Repre Vo Tutelle. p. 318. and Denizart. Vo Tuteur. No 6. — an election of a Tutor, had, without the participation of the Pet., was therefor irregular, and this circumstance alone without taking into consideration the preferable claim of the Pet. entitles him to demand a new election. — his claim will be considered by the relations & friends of the minor and if approved of by them, the Judge will confirm the election —

The Declarations of the French King, cited, do not apply in this Case — were intended to take effect only in such distant Situations, when the Minor had property, but where the Communication was difficult & rare —

Concludes for a new election. —

Friday 15th Oct. 1813.—

On Petition of Hon. W. Campbell } Judt. setting aside appointment of D. Sutherland & ordering a new election.—

Mc Gillis. vs Robillard & Garants } On Pltff's mo. for hearing the principal cause independantly of the proceedings en garantie.

Rolland for Pltff. cites, 1 Pigeau. p. 178. and Lousse 108. the cause en garantie not being joined to the principal cause, the Pltff entitled to proceed on the principal cause — and if they had been joined he is entitled to obtain their disjonction. — No suffe. oblgne dom — no notice to Pltff of proceds

Bedard for Deffs — The actions en garantie, by the practice of this Court are considered as joined de droit to the principal Cause, in consequence of the delay qe is given to call in a garant — The delays in this cause have been unavoidable in consequence of the death of the Garant, and the renonciation of his heirs to his Succession

Larocque vs Gilbert } On mo. to ex Pltff on faits & art.

Rolland Pltff. absent, & wd. retard the Cause unnecessarily the grants. the motion —

Bowen for Deffs — cites case of Hall. vs Cheeseman, where a similar application was granted — more especially as Cause was instituted this Term.

Simpson
Tutor &c. &c.
&
Labergeaux

Ou action for rescision of a deed of sale of Minors property to Defdt & his wife, mother of the Minors.

Bedard for Defdt says, that he has no objection to the rescision of the deed, but contends that the Court ought not to grant it upon the demand of the Pltff, as he was one of the persons of the assembly under whose opinion the Defendt obtained permission to sell the property. — That the Pltff, as Tutor ad hoc is not sufficiently authorised to prosecute this action, & he ought to leave it to the minor when he comes of age to determine whether he will take back the land, or confirm the Sale and take the price.

Sol. Gen. The Defendts became purchasers by the intervention of a third person, which was a fraud upon the Minors

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Fergusson
& Cadms
&
Chaboillez
Ld
&
Fergusson Ld
&
Bouchette
Gar.

Action on a Transfer by Bouchette to Pltff.

Gale for Defts Exrs of Chas Chaboillez, that Bouchette made a Sale of land to which he had no title, & therefore they do not owe the money

1. That Exer Test. not bound to pay debts, if Testator does not enjoin it. Nouv. Denisart. Vo Execution de Test. Rep. de Lau. Vo Executeur Testamentaire. Lacombe Vo

2. That deed. legal accords to laws of Lr. Can. — deed

was

& Ex. Test.

made after plea – not a state to be enregistered – not sealed and delivered – see Stat. filed, & evidence of Wits who say such deed is good for nothing –

Bl. Com. 305.
Co. Lit. lw. 3. ch. 5 Sec. 373.
2. Levinz R. p. 220. Seaton. Vs Henson

Deed made here must be good to convey land accords. to forms of Province where land is situated / Prevot de la Jannes Introd: p. 70. – Statut reel. see also p. 88. – 93. – 99 – 102. –

It is contended that Defts ought even now to receive a good deed of the land from the Garant. – Executors have nothing to do col. real property under the laws. The late Chev. Chabrilles if alive would not bound to receive it – Deed ought to be sealed, without which it is insufficient

Art 297. Cout. Nouv. Den. Vo Exr Testamentaire – § 2. No A. –

Ogden for Plffs. That a special clause in the will the Exrs are bound to pay the debts of Testator –

Bedard for Gar. The Gar. by an order in Council of Ups. Canada in 1807 had an order for land in question The form of the ~~act~~ deed of sale being valid according to the laws of Lower Canada, is sufficient, cites 1 Bouvier 110 and nothing more was req. from the Gar. than a deed of sale executed according to this form – Lacombe Vo Cote. as well might the Judgt of this Court be considered as invalid in matters respects the acts of the parties touching real prop. in Ups. Canada –

1 Bouvier 110

That Gar. offers to give a sealed deed of the land in question – not too late, as he has not been prosecuted for such deed, nor mis en demeure. – That Exrs cannot interfere

wt

with the reality, yet the Ct can give a Judt that upon his execute a Deed in that form, the Exptr ought to be adjudged to pay. —

Gale for Defdt — that the authorities cited respects the form of the acts, it only regards personalties —

—

Heneau vs Lalonde & al' — action of Trespass for cutting down wood on the land of the Pltff.

Stuart for Pltff. Defdts as Syndics, justify their right under a title deed of the Pltff's land from the Seignior containing a reserve of wood for building & repairing public buildings in the parish — The reservation is in favor of the Seignior — not to Syndics, who were Strangers to the deed — besides, the words, "constructions publiques" are of too general a nature to operate any thing in favor of the Church or its Syndics — it wd be stipulation in favor of a third, qr is invalid — Poth. Obl. Pt. 54 —

The quantum of damage not clearly ascertained, from difference of opinion of Witss on the Subject — Respect to Exptr

Vigé for Defdts By the act of Repartition, the Pltff bound to furnish a certain quantity of wood for repairing the Church, the Defdt as Syndics thereby authorized to take such wood — By an act, an obligation may be

stipulated

stipulated in favor of a third person. —

By the act of repartition the ~~Syndics~~ Habitans are req^d. to furnish a certain quantity of wood & to be charroyé w^t the Syndics at their need to the Church — a notification was given at the church door after wood to be furnish^d by each Inhabitant, in consequence of w^h each Syndic went to his particular district to draw the wood from the land of each habitant —

Stuart for Plff. refers to the authority cited from Pothier as applying — Syndics no authority under the Repartition — Reason for bringing suit here — to preserve the right of appeal —

— —

Dubois v. Lalonde & al.

Same action. —

Stuart for Plff. observes that deed of Plff's land filed by Defend^rs not auth^c. enclume, not being an acte authentique. —

Vigé for Defd^rs does not rely upon the deed of Concession, but upon the act of repartition — That there is no proof agt. but one of the Syndics

—

Kemp v Manson. } Action of Trespass. for taks a horse from poss. of Pltff. &c

Dade Genl. for Pltff. Defendt. justifies under a warrt from one Powell a Justice of the peace to Defdt. to seize and take the horse — the warrt. is illegal — it is a general warrant to go anywhere & everywhere to look for the horse 2 Hale. 113. 150. 3 Hawk. ch. 13. Sec. 10. & 17. — such warr. illegal

Georgen for Defdt — The warrt a suffe authority to Defdt. 24. Geo. 2. ch. 44. The legality of the warrant is not to be disputed in this Cause — Cite Blanchard v Kemp. 1 H. Bl. 15. — 4 Bl. Com. 291 — 1 Bac. Abr. 689 vo. Constable —

Sol. Genl — refers to authy. cited 4 Bl. Com. 291. as in favr of Pltff's right — the paper under which Defdt. acted, being no warrant —

—

Wm Marion v Piccard & Malo. Oppt } On opposition of Elizt. Aylet dt. Malo for arrears of rents & pension —

L. Vigé for Oppot. Upon heads. of the right of her claim, & an order for proof have been made, she now have made proof. demands Judgt. —

Rolland for Pltff. Question before Court is a question of preference between Pltff & Oppot — The oppot. does not

not claim under her privilege or preference, but by a droit d'hypotheque - On this principle the Pltff is anterior by hypotheque to Opt - and it is no answer that Pltff was a joint debtor to Opt - as the Opport. ought to have in that case claimed in sous-ordre of Pltff - no debt claimed from Pltff - no Judt. after -

Dugas vs Fontaine } submits to the Court -

Saturday 16th October 1813.

Bull vs Simmons } Defdt mo. to reject Replication as filed too late was granted, but it was intimated by the Court, that had the Cause been set down for ex. of Witss or any other proceeds had by Opt after the filing of the Replication ~~without any objection~~, it wd have been considered as a waiver of any objection to the regular filing of the Replication. -

Laberge
vs
Tellier dit
& Parisien
Gardien

4 The Sheriff has made his return to the order of the 14th inst. respecting the delivery to him of the articles seized, by which it appears, that a certain part of the said articles have not been delivered up owing to the resistance and violence of the Defendt. the Pltff moved for his contrainte agt. Defdt & Gardien

Stuart for Dfdt not liable to the att achmt. as he was not keeper or Gardien of the effects seized, — There is no law qu. makes Defdt liable to the Contrainte, for not representing the effects seized when a Gardien has been appointed for that purpose. —

Rule absolute as to the Gardien. — Defendt discharged.

Champeau
vs Lehmieux
& Devoyeau

Ou Pltff mo. to reject the Inscription de faux made by Defendt. She not having filed any moyens de faux since Saturday last when the minute of the acte was filed —

Nigé for Dfdt Pltff — no rule of Prac. as to delay for filing moyens de faux, the prac. under the French law should hold — answers to qu a notice ought have been given to the party depositing the minute & requiring Pltff en faux to file his moyens, which was not done — cite, Pothi. Proc. Civ. p. 336 —

336.

Lacroix

Lacroix for Pltff - contends that under the rules of practice, no notice was to be given to Defend. but he ought to have filed his moyens de faux within 3 days as any pleading in a Cause -

The Court rejected the motion, considering that as there was no rule of practice, the Pltff in faux sh^d have been laid under a rule to file his moyens de faux, as in case of an opposition returned by the Sheriff -

—

Johnson
Hutchins
& Blood

} On action to obtain communication & exhibition of Defend^s title, &c

Georgen for Pltff. states, that Defd. has pleaded that by deed of sale from P. Murray, to Frederick Lane of 6000 acres of Land in the Seigniory of Argenteuil free of all Seigniorial dues, claims & charges except the pay^t of a certain sum of money mentioned in that deed & therefore contends that he is not bound to any exhibition of title to the Pltff - contends that Defend^t ought to have made his opposition when the Seigniory was sold -

Ogden - The facts must be first ascertained

Boucker v. Jones

Action on decl'n d'hyp.

Ogden, ~~says~~, moves to be permitted to file an exception peremp. in conseq. of his having become proprietor of the land under a Sheriff's sale.—

Georgen for Pltff. objects to any exception being filed by the Defend. as he can be in no better situation than he now is, the having under certain arrangements with the former proprietors become bound to purchase the land at Sheriff's sale and to pay certain considerations therefor — The Defend. wishes to take advantage of his own fraud to deprive Pltff of his rights under the arrangt he made in regard of the land prior to the sale by the Sheriff.—

Ogden for Pltff.—

Neyenstadt v. Woolman & Woolman opp.

On ~~motion of Account~~ opposition filed by Defts to the regularity of suing out of Exon, for want of having given notice of the taxation of Costs.—

Ross for Oppts contends that Defend. was entitled to notice of taxation of Costs, although proceedings were taken agt. him ex parte, by reason of his not having filed his plea.—

Stuart for Plff. As Judt. was given by Defendt. as in a default, or ex parte, the Plff had nothing to do with Defendt.

—

Lamothe vs Boisthillier Oppt.

On Opp. for a deduction of part of the price by reason of a defficiency of the lot sold. D'Hericourt. p. 294.—

Bedard for Plff contends that lot of land is bounded by fences and fixed boundaries, the extent of which was not so necessary to ascertain as the limits, q.d. here were certain — therefore any defficiency of the true cannot be allowed — That oppt. ought to give up the whole or keep the whole as he has purchased it —

Rolland for Oppt. The ground was not sold accords to its extent within certain limits, but by a certain number of feet —

—

Castonguay vs Deschambault

On action for debt due by Succ. of Madr Duffy ag Deft. as Legataire Universel —

Rolland for Deft. it is not shewn that Deft. is legataire universel, nor does it appear that he has

has profited by the Succession of Mad. Duffy.
Fr. Civ. Sec. 3. art. 1. he has the property after death of certain persons, being substitué to them, but this does not make him actual proprietor, nor bound for ~~the~~ any of the debts of that succession —

Vrgé for Plff. There is no substitution in Mr. Duffy's Testament, the property must revert to Defr. or to his heirs after the enjoyment of the Dame Taschereau. As to the Renunciation, its too late — not formal, not being insinuated. —

Bertrand vs Voyer — } On Defrs motion in regard of maintce of bastard child. —

Stuart for Dfdt. the proceedings had subsequent to the Instt in this Cause are irregular, and a new action should be had in regard of the maintainance of the Child, instead of proceeding in this cause.

Vrgé for Plff. contends that proceedings are regular.

Deshautels vs Leclue — } On action petitoire. —

Question regarding Costs — to see how far Plff was under the necessity of bringing this action. —

Vigé for Defr. contends that Plffs action ought to be dismissed with Costs –

—

McGillivray et al
v
Limoges

action for Lods & Ventes on a donation from the Defr to his daughter –

Ogden for Plffs The Donation is a titre onereux, & a sale of the land, & therefor ought to carry Lods & Ventes. –

Vigé for Defr. The property ought to be considered as given en avancement d'hoirie, – whatever be the charges attached to it – cite, Pothom. liv. 3. ch. 37. p. 257. – 260. – Lacombe. vo Lods & Ventes. p. 428. – Poth. Fief. 2 Vol. p. 58. Ferr. 1 Vol. p. 223. No. 4. Comr sur la Cout.
Repertre vo Lods & Ventes –
Denizart do – do No 86. & No 98 –
Rolland v. Bellanger. Fevr. 1808 –

Ogden for Plffs contends, that a day ought to be given him to prove the nature of the burdens of the land being equal to the value of the land –

—

Wilson et al
v
Sanford
Sanford opps

On opposition of Mrs Carreau, on claim in consequence of the decease of her husband for her marriage rights –

Stuart for Plff. contends that Appt. has made no proof of the value of her claims -

—

Hunter vs Trip. —

On action agt Defts. on foreign Judgt —

Stuart for Plff - says he has proved his Case by an exemplification of Judt. regularly proved —

Ross for Defts. Plff has not proved his case, the exemplification not being regularly proved - cites. Case Trew. v Gilman. Oct. 1812 - where this Court admitted record under the Seal & Certf of Governor of State of Vermont as sufficient proof - that proof was rejected in appeal, & the Cause reversed. — That Judt. was rendered agt another person than Defendt - as he lived at the time in this Province That Plff in absence of Defts. seized in Portland in the Un. States a certain house and lot of great value, of which he has given no account, together with a large sum in debts in the hands of third persons, of gt no account hath been rendered, & for which the Defendt has made an Incidental demand, claiming the value of the said House & debts so seized by him — cites. Case. Drake v Goudreau.

Henry. v. Adey 3 East. 221.

4 Esp. N. P. 228

Stuart - in reply. refers to a different decision to that of Trew v Gilman in Court of appeals. Lotbiniere v. M'Kay. 1808 - The Certificate of the Governor, who is the Ch. Magistrate of the particular Govert where the thing is done —

This Court must presume that the proceedings before the Court in Massachusetts has been regular, & no new investigation thereof can be had here –

That the suing out a Saisie Arret is no extinguishment of Pltff's debt – no proof of damages on Incidental demand and suing out a Saisie-arret, if not done maliciously proves nothing –

Ross in reply – The exemplification even if under a proper seal is no proof, unless he identify the seal by verbal testimony – The Pltff seized Dfdt's house & lot and must be presumed to have paid himself, by holding the Dfdt's house he so seized. –

Piché vs Gallipeau

Action on deed of Sale. –

Parties refer to answers on fails & articles –

Noel vs Delery

Action to foreclose Dfdt's right of retrait in a certain share of Seigniory

Rolland for Pltff cite. Pothier Vente. Nos 436. claims Costs –

Bedard for Dfdt. Pltff shd have made a simple sommation instead of a suit, & ought therefore to pay Costs – Dfdt always wills to abandon his right – Court cannot deprive the brothers & sisters of Dfdt not before the Court, of their right of rémeré &c

Rolland for Pltff. says. that Dfdt. is the only person stipulating in the deed of sale. Therefore the only person amenable befor this Court.

—

Hergaret
v
Gourd

Action of damages for negligence of Defdt. whereby Pltff's Calash & horse were lost —

Stuart for Dfdt. Pltff has failed to shew that any reward was paid to the Defendt. for the service to be performed by him, which was material. — The Defendt. used usual diligence, and such as he wd. have done in his own affairs. —

Bedard for Pltff, contends there was negligence in Dft.

—

Hill
&
Turner

Action of revendication for Slaves —

Sol. Genl — Only evidence by Pltff that he lost 3000 Slaves, not shewn that Defdt. was ever in possession of his Slaves

Stuart for Pltff. Defdt. obtained poss. under an order of the Judge after the attachment — & this plea claims the property —

—

Corry
&
O Donelly

On Report of arbitrators —

hom. demanded —

Oviat
vs
Boyleau

Oncaution of Trover. –

Stuart for Pltff – objects to proof of a paper in the poss. of one of Wits the paper itself not having been produced

No proof that Defd. ever had delivery of the timber under this paper so as to entitle him to a lien upon it

That Pltff purchased the timber in open market from one McLean –

Sullivan for Defd. Defdt had the wood from his debtor, McLean to pay a debt upon certain conditions – he got poss. of the timber under this agreemt – and brot. it to Montreal – Dft. has made proof of the agreemt as far as circumstances would permit, as the person who had poss.n of it wd. not deliver it up. –

2 Saund. Rep. Pawnee has a special property in the property pawned –

There is no such thing as market ouverte by the laws of this Country to cover the sale of any article –

Poth. Prop. 219. 221. 224 No man can give more property in a thing than he himself has – Vente 325.

Custom that there is no delivery considered to be made of wood till the Culler's bill be made out –

Stuart in reply – agreement not proved – there can be no such burden attached to moveable property as that pretended by

by Defdt. under pretence of its having been given over to Defe as a pledge or gage. —
Witt. of Defdt. prove a Sale to him by M Lean instead of a giving over as a pledge — this Sale was at Montreal subsequent to that of Plff —

Monday 18th October 1813. —

Kemp vs Mansonde } Interlocr for proof

Paris vs Coron } Do — do —

Maranda vs Cousineau } Do — do —

Leodel dal vs Poitras dup } Defendt wise put out of Cause, exception dismissed as to Defendt. —

Diganard
vs
Trusdell

action on promissy Note

Lacroix for Defr, proof not suffe by one Witness Defr a Tavernkeeper, — Defr accepted Pltffs draft for the sum in favor of one Moreau, ~~of~~ Spent v. Colbath. Oct. 1810. —

Beauvais for Pltff — Note payable to orde — denies draft —

—

Jac. Vigé.
vs
St. Geo: Dupré

Action for part of Legacy

Pltff wife was Tutrix to the children by her first husband, to whom legacy was given by late Mrs Campbell

authorities of Defr
Ferr. Gr. Com. art. 268. Glose uniq. no 4
" — " art. 269. glos. 18. 2. 34
Lacombe, vo Tut. Curat. Sec. 10. no 13.
1 Bourjon, tit. A. ch. 2. Dist. 3 p. 48. — p. 49 authorities there referred to.
Meslé p. 287. —
Dict. de Juris. p. 4e Tutelle. p. 311. Col. 1. —
Id. p. 322. Col. 2.
2. Pigeau. p. 27.

Bedard for Defr — Pltff, wife having remarried loses her tutelle

The Pltff ought to give security to restor moveables after the usufruct — The minors have the property after the usufruct of their mother, & it is to the mother that the deliverance ought to be made, not to the minors, until her death, or her renonciation in favor of the minors, qr she has not done. —

Vigé for Pltff. The second husband by his marriage wt a widow becomes protutem to her children. 1 Bourj. p. 42. the woman so far loses her right of tutelle as not to be able to bring an action in her own name —

Denis vo Tuteur. no 56. c —

The

The Defendt is a stranger who has no interest to claim any security from the Pltff - as he can get his discharge without it. — Pltff is the heritier presomptif of Tutatrix & Tutrix to her children, cannot be bound to give security like a stranger, — L. M. Vigé - The distinction as to the widow losing the tutelle of her children, applies only where she had not applied for the appointment of Tutrix till after her second marriage — this is the reason why second husband is called a Protuteur

Bedard in reply. The qualité of Protuteur is found only in the Roman law, not in the law of the Customs — That Pltff holding 2 diffte capacities incompatible in law of heir & legatee is interested to obtain the legacy without giving security. — ~~&~~ see authorities.

2. Bourjon. p. 33. — No 1. 2. 3. —
Domat. liv. 1 Sec. 4. No 2. p. 132. —
Id. liv. 4. tit. 2. Sec. 5. No 1. p. 518. —
Lacombe. Vo Usufruit. Sec. 2. No 1. 3
Papon. liv. 14. tit. 2 art. 11. 12,
Id. liv. 15. tit. 6, arrêt 12

Lehuppe
v
Labadie
&
Lequay
Garr

On hearing under Interlocy for proof —
Cution pettoire.

Bedard for Pltff. contends that Defdt has not made proof of sous seing privé - only one Wite proves the handwriting — the other Wr says to the signature at the bottom of the writing is that of Defdt without saying what signature, there being three signatures to it — The signatures of Desire, the Wite is not proved — no proof of the decease of Desire — The signature of Defendt

Labadie

the defend. is not proved, qe ought to have been done, as it is an acte sygnallagmatique. — The arret cited in Lacombe under head Vente, may have been given in Province of Droit Ecrit where the rule of proof is different —

Vigé for Dft. It is enough that Defr. prove the obligation of the garant, being the person bound to the act complained of — the proof suffr. as signature of Legacé is the first at the bottom of the acte. Deseve could not have been a wits — as he acted as a notary in making the sous seing privé. — The subsidiary proof makes out Defends title — by Garant — acknowlegt of having sold to Defr & of Defends possession —

Bedard for Plff. The writing in question, even if proved could serve only as a commencement de preuve par ecrit if not proved, no subsidiary proof can be admitted — Now the sous seing privé has not been proved, — Deseve must be considered as a legal wits his act not being an acte authentique the Defrs signature ought also to have been proved, as there can be no sale without there be a purchaser — No proof of the rent alleged to have been pd by Defend —

—

No. 151.
St. Amour
v
Lacroix

Action for rente & pension viagere. —

Lacroix for Defr — not bound to pay the rent, until Plff give a sufficient discharge for certain claims & mortgages on the land — to Messrs Labelle, & to the Seignior. —

That Defd. ought to have the alternative to deliver the articles en nature or their value.—

That Defd. has made a tender of all that was due before Lndt. Vrigé for Pltff. The Defd. as personally bound is liable to pay the value of the articles after the term of payt has elapsed— As to what may be pd. to be due to the Seigr. the Pltff denies it — a delay must be given for proof— Defd. cannot refuse to pay the rent demanded under the pretence of rights due to the Minor, Labelle, the Defd. have possessed the land for 20 years & upwds he has acq. a prescription agt them—

Bricault v Bricault

On mo: to quash process, as not having been served in the delay required by the rules of Practice—

Ross for Pltff. sums was served on the 11th at 10 o'Clock in morns—

Process quashed.—

Laberge v Sellier & Parisien

On Rule obtd on Saturday last by the guardien ad litem of Defendt. why a contrainte should not be granted against him for not representing the effets seized—

Objected that rule had not been served upon the party—

Ross for Guardien, contends that

McPherson.
v
Murray.

On mo. to quash Capias —

Stuart for Defd. affidavit does not state that offer was made of Army bills in payt. of the debt — the word tender being used instead of offer

Ross for Plff. tender and offer, are synonimous terms.

Sutherland.
v
Campbell

On Rule to quash Capias. —

Stuart for Defd. Plff not entitled to a Capias in case of unliquidated damages by Ord. of 1785 — Defdt must be indebted to the plff — a debt can arise by Contract or quasi-contract — there can be no debt upon a delict merely an injury for which there arises a right of compens. in damages, tile when there can be no debt —

The Rule of practice allows Capias in such cases is illegal —

Laws of England & Canada diff. in cases of Capias. By 12 Geo. I. c. 29. Tidd. Prac. Arrest having become abusive were regulated by this Stat. even before it arrests for unliquidated damages Defdt was admitted to Common bail — and even after this Statute actions merely in damages, a Capias was not granted. 1 Sellon Prac. 42. —

That even if such Cap. could have been obtained, yet the

the Ca. here ought not to have issued, as facts and circumstances such as law had in view, do not appear. There can be no libel in course of legal proceedings — The sum sworn to not founded upon any circumstance to ground a demand for any sum of money whatever. — That there is no mention of tender or offer of satisfaction in the affidavit as req. by law. —

2 Bm. 807

Ross for Pltff, contends, that the affidavit made was consist wt rules of Practice — There could be no offer of satisfaction in army bills or otherwise, at least till after affidavit made

—

Racey v. Battersby

Action by Pltff as assignee of the Sheriff on a Bail bond. —

Stuart for Pltff, contends, that notwithstandg the Surrender he is entitled to his action. — 1. Not stated that surrender was made in discharge of the bail in the particular action. 2. No evidence whatever that any surrender was made.

Ross for Dfdt. By rule of Prac. party is entitled to surrender Debtor after an assignment of bail bond. — The Debtor was surrendered in open Court, 9t is all that was req. of Dfdt.

— Tuesday 19th October 1813. —

Dugas
vs
Fontaine
} Judgt. on report —

Herizaut
vs
Gouin
} action dismissed —

Rolland
vs
Mabbut
} Interlocy. for taxn of Costs —

Douglass
vs
Renaud
} mo. to amend rejected —

Lacroix
vs
Lessard
} mo. rejected, it appears, that the Cause was suspended until 1 June last, therefore the peremption not incurred —

Courtelée
vs
Lafleur
} action dismissed — from insufficiency of Declaration not stating clearly that Defdt. was personally bound to pay the rents

Larocque
vs
Gibert
} Defdts mo. granted — as all due diligence appears to have been done in the Cause by Defdt —

Rolland
vs
Jeremie
} Judgt. not allows. fees in Criminal na Inferr Court —

Dubois
vs
Lelonde
Exr
} Judgt apr Syndics. —

Dansereau
vs
Dansereau
} Inscription en faux allowed — pièce rejected —

Ferguson dal
Chaboillez
Garants —

Interlor for calling in heirs of late Chs. Chaboillez —

Dufsault
Lefevre
& contra

Judt. for sum demanded — Incidental demand for droit d'Isle dismissed —

Lester
Phelps
Oppr Oppt

Opposition allowed —

Dumas.
Burton
Winslade
& Robertson
Oppts

Oppositions afin de charge dismissed. —

M. Cord.
Griffin
Oppt

Judt. — interest allowed only from service of process as the only demeure proved —

Petro.
Couture
& Garants

Pltff's action dismissed. — the subsequent poss. wt title in the Defendr considered as entitled to prevail. —

Neyens dal
Woolman
Woolman
Oppt

Writ of Execution quashed

Bowker
Jones. } Defend^{t} mo. granted —

4 Muiz
" } 4 Certiorari quashed. —
Demers

= No fiat from Judge on writ necessary —
= Affidavit of Circumstances appear to have been laid before Judge
1 = Notice to the Justice, not personal, but to the domicile, not
sufft — must be made to the Justice personally. —
2 = Security not given according to the Statute, the Defend^{t}
not having joined in it.

Noel
" } Sup^{r} — but not as the absentees —
Delery

4 McPherson
" } 4 Defend^{r} mo. dismissed — the terms of Offer & tender
Murray being considered synonimous — see Tidd's Prac. 2 vol
Bank Stat. —

4 Sutherland
" } 4 Capias quashed, Defd^{t} to file common appearance —
Campbell — no offer to pay. in notes —

Bricault pur
" Bricault

On defend^r mo. for a distraction de frais. —

Bedard for Def^t. contends that he is entitled to his distraction notwithstanding Def^t. be indebted in a large sum of money to Pl^ff.

Borton resists mo. offers to give credit to Def^t. for the costs.

Wednesday 20^th. October 1813.

Bricault
" Bricault } mo. granted —

Sheek
" McDonald
& Waggoner } Judg^t —

Hill
" Turner } Judg^t. for Pl^ff

Racey
" Battersby } Judg^t —

Noel
" Delery } Judg^t — on faculté de remeré.

Simpson
" Laberge & ux } Rescision de Contrat de vente.

Toupin vs Shoulbr — Judt. for Plff

Sheek vs McDonald & Waggoner — Judt

Vigé'aux vs St George — Dismissed

Deshantels vs Ledru — Judt — Costs divided —

Bidequin vs Aubuchon — Judt. to amt

Bertrand vs Voyer — Judt — sending allowance to the bastard child. —

February Term 1814.

Tuesday 1st. February 1814.

Ch. Justice absent from indisposition.

Harris vs Clarke

Defd. moved for hearg. on merits

Pltff prays another day for evidence, as he has done diligence, but Witss did not attend —

Open for Defd. subpoenas served too late. —

Filion vs Dagenais

Mo. to ex. Pltff first Witness day next Vac.

Pltff objects to delay — says he is ready to answer in term —

Wednesday 2. Febry. 1814.

Filion vs Dagenais

Mo. grantd. for the last Witness day in this term. —

Harris vs Clarke

Pltff. mo. rejected —
Defd. mo. granted —

Bricault vs Bricault

On defds. mo. for delay —
Objected to by Pltff. — debt —

Quevillon
vs
Labelle —

Debt on deed of Sale —

L. M. Viger for Plff. Defts. purchasers of Minors property by autorisation payable at their majority, or mariage —

Nothing s? for Defts —

Laroque
vs
Grébert —

on defend. mo. for security for Costs —

Rolland for Plff. no proof that Plff is out of the Province —

St. 1801. Ch. 7.

Dorions
vs
Thompson

on Defts. mo. to quash writ from want of Service by a ~~bailiff~~ person not a bailiff —

Osborne
vs
Mallous

on Rule Nisi — for Execution en Just? —

No cause —

Thursday 3d. Febv. 1814.

Larocque v Gilbert — Mo. over-ruled.—

Quevillon v Labelle — Excep dismissed.

Bricault v Bricault — Mo. over-ruled—

Dorions v Thompson — a day given for proof on motion.—

Rolland v Mabbut — action for attornies fees—
Pltff. demands Indt. in consequence of bills of Costs have been taxed —
Bourdon for Deft. submits the case—

Boivin v Robillard — on Defts. mo. for calling in his Garant—
Rolland for Pltff—objects— Deft. personally bound to pay half of rent qt. is demanded— ought not to be delayed by calling in the person bound for the other half
Bourré for Deft. The Garant may have pd. whole rent due

Foretier
ss.
St. Aubin

On Defendts mo. for delay to call in his garant.

Bourré for Pltff. objects that Dft. shews no sufft. cause for delay – the person to whom defendt. retro-cedid the land not being bound to guarantee the Defendt –

Georgen for Dft. cites case of Turgeon v. Villiot – last Term

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Blaket & Loedel
ss.
Poitras –

Action on Promissory Note. –

Lacroix for Pltff. prays Judt. on Defendts admission by his answers to fact Articles –

Stuart for Dfdt. The prom. Note declared on that admitted by Defendt is dissent – therefor Pltff. not entitled to Judt. cites. 1 T. Rep. 447. –

1 T. R. 447.

Friday 4th February 1814. –

Boivin. –
ss.
Robillard.

Mo. granted –

Foretier.
St. Aubin.

Mo. granted –

Loedel dal'
ss.
Poitras. –

Judt. on merits –

Davids. vs. Frobisher, & Garnishees

On defend^{t} mo. to quash process as irregularly served. a day given for proof—

Marchand vs. Skakel Curr. —

On Pltff's mo. that Defd. render acct. as Curator to the estate of the late H. Jameson, in consequence of a return of Nulla bona upon the execution sued out ag^{t} him—

Ross for Defd^{t}— The Cause was out of Court by the final Judt— and no new proceedings can be grafted thereon,— the party must proceed by a new suit. —

Bolton for Pltff— states his demand to be for saving expense, and conformable to practice at Quebec —

Robillard vs. Courville

action for arrears of rent.—

Bender for Pltff. wood offered by Defd^{t}— proved to be bad— refused to furnish horse, as Pltff's wife is dead, and Defend^{t} pretends that Rent should be diminished for a half

Ross. The act is the law between the parties— by it the Pension is diminished in one half, therefore oats & hay demanded ought to be diminished for one half— action ought to have been in the Inferior Court, and therefore Defd^{t} ought to have his Costs. —

Richardson
v
Marchand

On Rule to shew cause sued out by Defd. why he shd. not have a prolonged delay for clearing his land in consequence of the impediments he has met with from the proximity to the seat of war. —

Ogden for Pltff objects to delay — agrees to give 3 months now

—

Laforce
v
Clarke
&
McNaughtan

On opposition — nothing sd. to support opposition —

—

McPherson
v
Murray.

On motion to reject plea, as have been filed too late — have been filed on the 3d. instead of the 1st —

Saturday 5th Febry. 1814.

Monday 7th Febr. 1814 —

Robilland
vs
Courville } Judt —

Paris dux
vs
Caron — } Judt. on motion, admitting Pltff to file copy of the Judt.

Mr. Martin
vs
Brown et al } On mo. for security for costs
Pltff — mo. too late — must be made within 4 days from the entry of the action — over till to morrow.

Sutherland
vs
Beard — } On Pltff's mo. to reject plea filed by Defdt. too late — being filed on 25 instead of 21st —
Rule is that in Vacations between Dect & Febry the party is entitled to 20 days to plead instead of 15 — which brings him within the time —

Tuesday 8th Febry 1814.

Sutherland v Beach — Granted — The Court held that as the Defts had the benefit of the Rule for 15 days in term, he ought to be bound by it, & ought not to claim any benefit under rule grants. on ex contra to plead of 20 days in the vacation between Hilt & Febry Term —.

M'Leod v M'Intosh — On Rule Nisi for pub. of a Com Roy —

Boston for Defts — no affidavit to shew regularity of conveyance of return —

Osullivan — there is an affidavit — Mo. rejected —

M'Pherson v Murray — On mo. to change conclusions of Plea, & conclude to Country

Stuart for Defts — says the parties are not of a description to be entitled to a trial by Jury —

Wednesday 9th Febry. 1814.—

Osborne.—
v.
Mailloux

Plea granted to Defr. to one out a Comn. Rog. retble the 18th.—

Thursday 10th Febry. 1814.—

M.Pherson.—
v.
Murray——

The mo-fr Jurs. disallowed — mo. was aplen and withdrawn — The Plff appeard to be a Carpenter & the Defr a Timber-merchr — and the demand fr work & labor. &c—

Allard
&
Brousseau
&
Dauphin oppt

Rolland for one of Oppts moved to make an Inscrips. en faux aft an act produced by Oppt Dauphin in support of his oppos.n—

p.20

Bowen for Oppt Dauphin — says mo. too late by Oppts. have pleaded to the oppn — on Rules Prac. p. 25.—

Rolland, says that by a proviso in the said rule it is allowed to make the Inscription en faux provided it be demanded before trial of the Cause.—

Terrien
v
Goddard

Action of debt on deed of sale —

Beaubien for Defdt — The land is mortgaged to one Barron for £000tt — & therefore asks security, & an acquittance of mortgage & also his costs —

Boston for Pltff — Defdt has not complied with his obligations & Pltff was under the necessity of bringing an action. —

—

Sutherland
v
Campbell

Hearing on law — action for libel — contd till to morrow

—

Mc Gillis
v
Robillard
& Dumouchel
Gart —

Action en declaration d'hypotheque —

Vigé for Defdt says he has called in his Garant — & submits case

D. Vigé for Garant — does the like. —

—

Friday 11th Febry 1814.

Allard
vs
Brousseau.
&
Dauphin dal
opps

Case to stand over to move Mr Rolland's affidavit —

McGillis.
vs
Robillard
&
Dumouchel Garn

Injt.—

Sutherland
vs
Campbell

On hearing on exceptions. —

Ayme of Counsel for Defdt submits the exceptions — contending that they are sufficient in law —

Ross for Plff. contends that exceptions are ill-founded as the proceedings in Court cannot warrant the using of improper language — cites. Rept. vo Injures. — Id. Vo Avocat" —

Martin.
vs
Mondor.

action on deed of sale

L. M. Vigé for Defd. says, he has paid 500# on acct & has proved it from the mouth of Plff — who adds that the greater part of the money was applicable to other transactions — the Plff cannot apply the payt in this way, the imputation being belonging to the party paying the money — The confession of Plff must be divided —

Beaubien for Pltff – The receipt is not proved, nor admitted by Pltff on his oath – The Pltff admits the receipt of certain monies, but states on what account they were rec^d. – the confession of Pltff cannot be divided. — Potts. Obl. on head of facts & art. — N^o 827.

Saturday 12^th. Febry. 1814

Terrien. Goddard — Instr. on Pltff giving security to indemnify Defts —

Allard & Brousseau & Dauphin & al opp^ts — On opposants mo. to be permitted to withdraw his plea and be permitted to make an inscription en faux ag^t the act produced by opp^t. Dauphin – founded on an affidavit to which he refers. —

Boston for Dauphin resists the motion. —

Foretier & Ste. Aubin — The defend^t. had delay given to him till the 11^th. to call in his Garant – he did not do so, whereupon the Pltff moved to proceed ex parte ag^t Def^t —

Georges for Def^t. objects that he has 3 days from the day allowed him to call in his Garant, to plead to the action —

Bourré for the Pltff opposes this right. —

M.c Martin.
"
Brown & al.

On mo. for a Comm. Roy. to Up. Canada —

Sullivan for Pltff — action on an acte authentique — no ground set up to admit proof — no affidavit to shew necessity of the application —

Boston for Dfts — The Com: Roy. is of right, and no affidavit requisite — proof is necessary to shew that debt has been satisfied. —

Sutherland.
Martin —.

Action of Indeb. assumpsit —

Beeumbien for Dfts. The Dfts. is not the personal debtor, is only security for another —. refers to the words of agreemt — There are different Counts in the declaration — some stating Dfts to be security; others the Personal debtor —

Gale for Pltff. The Defendt is sued as a principal debtor. and proof must be gone into to establish it before proof can be made — Order for proof —

Charland
Morin & al
Jas. Viger Advs.

On Rule nisi — The Defendts made default — Pltff prayed that rule shd be made absolute —

Beaugrand
Cur[teur] vs
Boivin & Robillard

On action petitoire. —

Bourré for Defd[t]. The interdiction of Robillard was illegal, he not having been present & been examined by the Judge — cites Lacombe. v[o] Interdit — Denizart — v[o] Interdiction N[o] 12 & 13 — Dict. Droit — v[o] Interdit — Mlé Min[te] p. 247 etc. 13 — The appointment was special, and cannot be extended by bringing any other action — Rep. de Jurisp — v[o] Curateur p. 174. 6 The Defd[t] is prosecuted in her own private name & right, whereas she shews by acts filed that she holds property as Tutrice to her mina Children, as her husband had acquired it before her marriage w[th] him —

Rolland for Plff. The Interdiction here was general, not special, and extended to all cases — & to the bringing the present action — cites authorities — Powers of Curat[r] to an Interdit, same as Tutor to a minor — cites That the Interdiction is regular without enquete or Interrogatoire — cites auth[s] — That Plff not bound to take notice in what right the Defend[t] holds the land, he attacks the titles of Donation, which must destroy all titles — cites authorities — The Defend[t] contends that Plff ought to have brot an action en rescision, whereas where an act is ipso facto void no such action is necessary — That the deed of donation being made long before the Interdiction, still it has an effet retroactif, where it can be shewn that the party interdit was incapable at the time of the acts complained of. —

Vigé for Defdt— The authority given by the Interdiction to the Curator, was to provide for the maintenance of the Interdict nothing more was demanded by the requete en Interdiction — An Interdiction cannot be valid in the Custom of Paris without Interrogatoire of the party interdicted — to which authorities cited by Plff do not apply — That the Court cannot give a Judgt— vs Defendt— whereby the rights of the minors can be affected, who alone pretend a title to the land —

—

Murray — vs Kuper —

On rule Nisi — that Plff's suit be dismissed for want of a power of Attr to institute & carry on Suit —

Gale for Defdt. refers to Rule to practice Sec. 12. —

Grant for Plff — ~~Affirmation~~ to file the power, not have sooner been able to produce power by reason of the absence of Plff's Attr. Mr Stuart — That it can be shewn that Plff was personally present in Court at return of writ & therefore a power was not then necessary to be filed —

—

Lussier — vs Bissonette

Action for Legitimie —

Beaubien for Defendt — — Rule to be drawn for Practice

Bricault
vs
Bricault

action to obtain the rescision of a donation & for payt. of arrears of rent —

Georgen for Defdt contends that the grounds stated in the declaration are insufficient to warrant the rescision — Pothe. Don. sec. 3. p. 502. 3. 4. 4to — Only grantable when Donee has refused to comply with the terms of the deed — For Gr. Com. Vol. 3. p. 1101. Nº 22. — Ingratitude not suffe. Cause of revocation — No acts of Ingratitude stated in the Decln this is necessary — Riccard. Don. 1 Vol. p. 553 — That Pltff is indebted to Defdt & he has pleaded Compensation to cover Pltffs demand as to arrears of rent —

Ross for Pltff refers to clause in deed of Donation upon wch the action is founded, regarding the fulfilling the terms of the deed, and keeping up the cattle & the houses in repair That Compensation cannot be admitted here, as not being a plea to the action of resiliation — Cte. art. 127.
Rept Vo "Compensation" — could not set up aft. payt of rents & pension. — Denizt. Vo Compensation" —

Georgen for Defd. The declaration is not founded on the clause in the deed of donation, but upon causes of resiliation said to be given by the law —

Debartelize
vs
Wenttodal

On an action petitoire. —

Rolland for Plff. claims 2 Wind mills & house which belonged to late A. Winkelposs & purchased by Plff under the adjudication of the Sequiny. — Plff has proved that Defend^t is in possession of one of the mills, the other have been given up —

Sullivan for Defd^t — The plea of Defd^t is "non detinet" which obliges Plff to shew his right of property, & also that Defd^t has with held it — Plff has failed in this — Plff's vare title — the Sheriff's deed is not alone sufficient — he ought to have shewn possession under it. — The Defend^t shews by a deed of donation filed that the mill in question was given to the Defend^t father by the late Andw Winkelposs, & by his d^t father given to Defd^t — Plff cannot have greater right than late Winkelposs himself, who could never have complained of this possession —

Rolland. Poth. Prop. 248. 251 — action may be instituted by an adjudicataire without any prise de possession

Monday 14th February. 1814.

Murray vs Kuper — Mo. rejected, as Defendt had pleaded to the action — over till to morrow. —

McMartin vs Brown — Mo. rejected — no affidavit to support the application —

Forsyth & St. Aubin — Mo. granted — as Defendt may have used a pretext of calling in his Garant in order to obtain delay —

Allard vs Brousseau & Dauphin & al — Opp — Mo. dismissed — as Mr Rolland ought to have asked for delay to plead instead of filing a hasty plea —

McPherson vs Murray — On mo. to reject ~~Reply~~ Plea to Incidental demand as being filed too late, vizt. on 12th. instead of the 10th — when it was due —

Ross for Plff. The Court on the question respecting the mode of joining the issue not being given till the 10th — till when he could not file any pleading —

Daigneau vs Beach — On mo. for proceeding ex parte —

Bostwick for Defd contends that he ought to have had notice.

McLean & Pomeroy — On mo. for a peremptoire of Incidental Demand

Ogden for Defd. Rule prac. does not apply to Incidental demands & further that a proceeding was had by the Defts mot. of day. —

Tuesday 15th Febv 1814 —

M.Pherson. — v Murray. —

The Court were of opinion that all proceedings in the Cause were suspended during the time the same was under consideration on the question respects the mode of joining the issue, and therefore the Plff was not bound to fyle his Replication & plea to the Inc. Dem^r until the Court had determ^d thereon — & this having been done on the 13th the filing of those papers on that day was regular — mo: rejected —

Mc Lean v Pomeroy and E Contra

The Motions of both parties granted, & Princip^l & Interest demands dismissed for want of proceeding. —

Rolland v Abbott

Judgt

Sutherland v Campbell

Exceptions dismissed. —

2. Bur. 807.

Daigneau v Beach —

Mo: granted —

Murray v Piper.

The Ct considered that the neglect of filing the power of Atty did not subject the Plff's action to be dismissed, on motion, more than in any other case in gl a Plff might have omitted to fyle in due course any essential paper for the support of his Cause — the defect could be enquired into only on hearing of the Cause when if any such paper were wanting the Cause wd be dismissed — They therefore considered the mo. as premature and rejected it. —

Wednesday 16th Febv. 1814.

Filion
vs
Dagenais

on Defts mo. that Pairs Sart. be taken as confessed
Rolland for Pltff - Pltff is stated in declaration as an absentee
and the service of the Pairs Sarticle made at Riviere du Chene
besides Pltff is now in the Corps de Voltigeurs, ose admitted by
Defnde - & therefore service at former domicile insufficient, it
being necessary to be made at the actual domicile of the party
Pairs ou Lundi impertinent -
Gale for Deft - there is no other known or apparent domicile
for the service of the pairs Sart. but that at Riv. du Chene -

McMartin
vs
Brown

on Defts mo. for a Com. Rogr - grounded on affidavit
Osullivan for Pltff - question already decided.
of this opinion was the Court & rejected the motion. -

Johan. Taylor
vs
Alex. Drennan

No 59.

Action for rent of a farm. -

Boston for Pltff, demurs to plea of Compensation as not
applicable -
Grant for Deft - The demurrer is not suffe in form as the
reasons of demurrer are not set out - The article, were furnished
in payment of the demand & ose pleaded -

Delabroequerie
"
Lacoste

Action ag^{t} Def^{t}. to compel Defend^{t}. to give up the land which he holds as farmer. —

Bender – No room for damages, none proved – unless what is stated to have accrued since the action — Objects to testimony of Fran^{s}. Vigé, as cause of the Suit, and as giving an undue testimony in favor of Pl^{ff} – That all verbal testimony ought to be rejected as inadmissible – Defend^{t}. is willing to give up land, but ought to pay no damages. —

Quesnel for Pl^{ff} contends that he had given notice to Defend^{t} – to quit in due time, and also the refusal of the Defend^{t} – he has also proved his damages, & that Defend^{t}. is still in possession. —

Bricaret
"
Bricaret

On Rule a^{t}. Mr. Cartier a Wit^{r} to shew cause why he sh^{d}. not be condemned to pay a fine of £10 – for having refused to appear & give his evidence before the Practicers –

Ross for Cartier, the pl^{ff} not entitled to sue out this rule – as travell^{g}. expences were not tendered – Subpœna improper, as it contains an order to appear w^{t} all his books of acc^{t}. for 14 years – The Wit^{s}. incapable of travelling from sickness –

Priest
"
Brydee

On mo. for jud. of Com. Roy.

Boston for Def^{t} – Interrog^{s} – have not been admitted accord^{g}. to the rules of Prac. by the Judges –

Rolland for Pl^{ff} – Def^{t} has admitted the Interrog^{s} – by joining in the Com. thus just – cross Interrog^{s} –

Murray
vs
Kuper

On rule to shew Cause why a power of Attr filed by Plff on the 14th inst. shd. not be taken from the files as being irregularly filed. —

Larocque
vs
Gibert

On Deftrs mo. to ex. as well the plff as Mr Munro, his agent upon facts & articles—

Boston for Deftr— Plff absent, and Mr Munro was his agent who did the business & expects which he wishes to ex. the party —

Rolland for Plff. cites. Lousse. on Code Civil — Denizt vo Facts & articles. 1 Pigeau. p. 234—

Motion over-ruled —

Thursday 17th Febry. 1814 —

Priest
vs
Brydee

Mo. for pub. rejected, the Intervor— not having been regularly served with 8 days Intervor. not having been allowed by the Court nor the Judges — & the consent of Deftrs by joining his cross-intervor— without such allowance not sufft, but will exempt Plff from costs on this Rule

Filion
vs
Desagenais

a day given to plff to answer facts & articles — as the Plff was stated to be a Soldier in the Corps de Voltigeurs & the facts & art. had been served at his domicile

Murray
vs
Kuper

Mo. granted —

Bricault
vs
Bricault

Exceptions dismissed—

Taylor
vs
Drinnan

do do —

On Petition of
Jn Bte Sorel dit
Lesporte —

On Habeas Corpus — ap. Jn Bte Paradis —
Sept.

Christin. —
vs
Lacroix

action for arrears of rent —

Lacroix for Defdt — an offer was made of the articles due — ought to have the alternative. Poth. No 247. — case diffte from that of Toupin vs Shultz —

L. N. Nezi for Pltff. the question has been determd on the exceptions pleaded by Defdt. that Pltff did not give the alternative by his action — Case of Toupin vs Shultz applicable as the rents demanded was due for a year before demand — That tender made in this cause was clogged wt conditions pltff was not bound to fulfill —

Hagar
vs
Fitch & al'

Action on Note —
Ayton for Defdts no plea of renonce stated of Fitch Defdt

Allard
vs
Brousseau
& Dauphin
Gw. Dauphin
& Allard } Opp.

On hearing on oppositions —

Boston. Dauphin, claims preference to be paid before Eliz. Allard, as have a prior mortgage —

Rolland for Eliz. Allard. acte of Constitution de Rente is a nullity - The convention is inter alios — It was made in favor of Franc. Dauphin, who ought to be claim. Poth. Obl. Nº 54 — Nº 70. & 71. Geo. Dauphin ought to have claimed only what he gave, but not the Rente, which was not stipulated in his favor — De Pec. Constit. — Act is fraudulent, being a Rente of 20 bushels of wheat in favor of a man not 40 years of age, in consideration of a principal sum of 600ª. —

Boston in reply — Opp. only person entitled to claim Const. de Rente. Nº 234 — & 240 —

Duvabaux
vs
Desnoyers.
& Dubreuil. vs } Action for certain arrears of rente.

Rolland for Plff. demands Inspt. on evidence adduced As to moveables — only 3 articles can be demanded, a party on fact & art. does not admit to have more in his possession

Bedard for Defts as to the 400ª. Plff not entitled to any part of it, as not ceded by the donation of 1803. under which alone Plff can claim the rente in question — at all events

Plff

can have only one half of that as well as of the Rents, the Cedent herself could claim no more — the art. 282 prohibits such advantage as that claimed by Pltff — Poth. Const. № 480. the Rents should be divided between the Survivor & the heirs of the deceased — Const. Rents. № 242. — That Made Dubreuil could not give more than her right in the said rents, which was one half — & she in effect has not given more — As to wood, the Defend. bound only to saw it, the Pltff bound to furnish the wood — which they do not shew to have done — as to the nourriture de la Vache, the Defd. was always ready to receive the Cow, but she was never brt — as to wages of servant girl not due — as to House-Rent — not due, as Pltff would demand only the jouissance of the house & it was never demanded. — as to 5 cords of wood not due — a discharge was given to the Co-obligé & consequently the Obligés to the Debt — Poth. Obl. № 275 — As to the articles in the possession of the Defd only one half of them due.

Rolland for Pltff. By a Judt already given between the parties on 15 Feby. 1813, the contest now raised by the Defd has been determined in favor of Pltff — The heirs of the late Dubreuil have no right in the Rents in question having renounced them, as appears by act of Donation 1740 That transport of Rents to Pltff in regard of Defd seems not clear, being only on act of Division of 1803 — Defend cannot be considered as

discharged from the payt. of the wood, under the discharge of Dubreuil pere — the contrary intention is evident — The action is a suppt. demeure of the saisie du bois, & has been allowed by Practicers when report has been homologated The Defts. have refused to comply wt. the act under which the Pltffs claim is bound to pay rent of house as well as the other articles — as to price of wheat, Dom. Ord. 1. tit. 2. Sec. 2. sect. 17. — Polth. Obl. Nº 159. —

Bedard in reply — A Ren. to a right of Inventory is null & the heirs could not make such a Ren. by Dom. of 1790. allowed only in case of art. 281 — not applicable here — In the Cause joined between the parties in wh. the Report of the Practicers was made, the exception pleaded here as to the right of the pltff to demand only one half of the rent was not pleaded —

Larocque
vs
Gilbert

Action for Rent on lease — for Seigr. dues wh. Defdt became bound by his lease to pay — & for a note of hand, & for damages for cutting down wood on the farm —

Boston for Deft — admits rent of £10 — The Receipt pld by Defdt. covers the demand for the note, & Seigr. dues, as being due at time it was made — The wood cut, of no Value — was injurious to the land & therefore cut-away by D, for —

Castonguié
vs
Deschambault

Defr. sued as Legatee of late Mr. Duffy, for a debt due by her to Plff. —

Bender for Plff. contends that he has made proof of his demand, & that Defr. has made acte d'heritier. — an act of Rem. has been filed by Defr. dates 3 years ago since q. time he wrote a letter to Plff. counsel admitting debt & shews that he had taken poss. as Legataire. —

Rolland for Defr. — No proof that Defr. has intermeddled with the Succession of Mrd. Duffy — he was Exter & had a right to keep in his poss. the moveable — Resp. vs. Legatee removal — no action unless Defr. were in poss. of the property of the Estate —

Smith.
vs
Fraser.

Action for wages as Clerk. —

Bolton for Defr. Plff lived for 25 months in Defr. service — dur. q. time he rec. wages for 2 years — Plff incapable to perform q. he had undertaken — did not do his duty as a Clerk — & altho' Defr. had right to do so, yet he has not proved that Defr. turned him away —

O Sullivan for Plff contends that his proof is insufficient to support Defr. pretensions, & is therefore entitled to his just

Paris dup
v
Caron.

action on Recognizance in appeal —

Boston for Pltff. says £36. 4 still due to Pltff —

Sullivan for Deft. the Condition of the Recog. was that Deft shd pay in case the Judt. was reversed — The Pltff took property of Robitaille in execution, before the discussion thereof was had this action was instituted — This is proved even by Judt filed by Pltff —

Boston in reply — The discussion was had at the instance of the Deft. it was for their benefit. & when done Pltff. shews a balance due to him

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Vve Baillé
v
Bramble
& Octr. 1810

Mc Martin
v
Brown
et

Action on a Bail bond —

Case submitted. —

Friday 18th. Febry. 1814.

Ovicat
vs
Boyle.
&
Walker.
— Action dismissed —

Smith
vs
Fraser
— Judt.

Labroquerie
vs
— Judt

Allard
vs
Bourassa
&
Dauphin
— Oppn. dismissed — X

Wilson
vs
Careau
&
Mrs. Sanford
— Judt

Castonguè
vs
Deschambault
— Dismissed X

Paris
vs
Caron dit
— Judt X

Beaugrand
vs
Boisvin &
Robillard
— Judt. dismissing action as to Robillard. — X

Sauvé
Dⁿ Aout
Valois opp.

On question of Cost on the admission of the opposition —

Saturday 19th Febry. 1814

Quevillon
vs
Labelle —

Case of a third person promising to pay rente to a Donor —

Plamondon
Vve Palin
vs
Ballard

Do —— Do —

Pothier
vs
Decoteaudal

Interest upon arrears of Rente Constituée refused
Pothe. constit. No 111. —
Bedard for Plff observed where the prix du fond, had been converted into a Rente Constituée, there Interest was due. —

Foretier
et
Perron

Same point —

Girard
vs
Quevillon

Promise of a third person —

Duval dux
vs
Desnoyers
Vve Dubreuil

Inscr —

Osborne
vs
Mailloux

On plff's mo. that Rule Nisi be declared absolute —
Granted —

F. Boisvin
v.
Robillard
&
Fs. Boisvin fils
Gar.

On Pltff's mo. to proceed ex parte agt. Defdt.
Defdt. appd. on 1st. and moved for delay till 15th. to put
his Garant simple into the Cause — this was granted
and the Garant was summd. & appeared on that day,
the defendt. did not however plead — Upon this the Pltff
insisted that Defdt. was in default — as he was not entitled to
more than 3 days after the Garant appeared, particularly as
he could not declare the fait & cause of Defendt — The Defendt
cited case of Simpson v. Elliot & Garant — 12 Octr. 1813 — in wch. it was
held that a Defendt had the same delay for pleading as his
Garant when he appeared in the Cause —

Motion over-ruled —

April Term 1814

Friday. 1st April 1814.

Bowker vs Jones — No. 15

On Plff. mo. to ex. Dft. on fait & art. —

Upon pr Defdt objects to mo. as Plff is in default on the exception filed by him —

Jobert vs Lainz

On Defendt. mo. pr a peremption in the Cause for want of proceedings —

Stuart for Plff — contends that the rule ought not to be construed strictly, when party is ready to proceed. — now moves to be allowed to fix the Cause pr ex. of wit. on 14th inst — refers to case of De La sausaye. vs. Burton. in Appeal —

Borton for Defendt — contends that Rules of Prac. must be put in force —

Boivin vs Robillard

On mo. pr evidence —

Defendt. contends that there ought to be hearing in law upon evidence —

Saturday 2. April 1814

Bowker vs Jones. — Mo. for Fait. part. overruled as there was no issue raised thereon by Plff —

Dougherty vs Hall — Defend? mo. for peremption granted — but as to disconts. Mid? Demand rejected —

Bergeron vs Cadeaux dal'. — On 2 separate motions of two different parties Defend? — They agree to withdraw their motions & to allow Plff to make the motion

As to rule of Practice respecting No. of Cause — & Term —

Raymond vs Sullivan — On Exception to reputed of suit, part of which is for a balance of a former Judt. of Defd, for q. no action can lie, but party ought to have proceeded on his Execution —

Arnoldi vs Ant. Perrault Ang. Perrault — On action for medical assistance —
Plff. mo. to ex. Plff on his Servant supplétoire —
contends that Plff's debt is not prescribed, there being an interruption — The Defd. Ang. Perrault does not plead

prescription, but tacitly admits the debt by saying that he ought not to be bound to pay it being a minor at the time — refers to testimony of R. Nelson, wherby it appears that Defend. admits the debt — cits authorities to shew that plea of prescription cannot be supplied by the Judge. — That Ant. Perrault ought to be bound to pay the debt in question as Anty his son then lived in his house —

L. McVicar for Anty. Perrault — That Pltff having allowed a year & day to elapse ought not to be admitted to his oath, even altho' there has been no plea of prescription set up — Objects to testimony of Nelson as proving a debt above 100^{tt}. —

Beaubien for Defd. Ant. Perrault — That oath cannot be received upon light grounds — Poth. Obl. № 831 — no grounds in the Cause to justify the application — Obl. № 802. proof of confession above 100^{tt}. cannot be rec^{d} —

Taylor
vs
Drenan

Our question as to right to ex. wit. to prove the admission of certain parts of Defend^{ts} demand per articles prescribed by him to Pltff

Borton for Pltff — objects to proof as to such. objects above 100^{tt}. Poth. Obl. 799 Ten Cross-examination — not pertinent to exam^{n} in chief —

Stuart for Defd^{t} — The interpretation put upon the ord^{r} of Moulins, must be now extended — not being matter of contract

Contract between the parties, but being mere matters of fact touching y^e furnishing certain articles to Pltff by Defd^t — That none of the separate articles, in the account amounts to 100^{tt}. and as each item in the act. furnished a separate right of action the Defend. is entitled to prove them by Wit^s — without a written admission — That Defd^t. besides does not propose to prove any Contract — but merely the delivery of the articles — Rescindication Bornier 147. — Jousse p. 10. Danty. 67.

Boston. for Pltff — The distinction is, that when the party can procure a writing, he ought to do so, or not furnish articles beyond 100^{tt} — The demand set up here is to pay a debt constatated by an acte authentique —

Monday 4^{th} April 1814. —

Raymond
vs
Sullivan — } The demurrer admitted — The action dismissed as to the Count founded on Indt — rendered in Curia last —

McKenzie.
vs
McGillivray
Hal. — } On Pltffs mo. to fix Cause for evidence on 7^{th} —
Objected that — cause ought to stand for vacation — 4 / 4 days notice of fixing it given. —

Labrocquerie
vs
Lanquedoc

On defendrs mo. for main-levée of saisure of Defendrs goods. calltr vs — 1 Pigeau. 114 — Poth. Proc. N° 313 — Rép. de Jur. vo Revendication —

Quesnel for Pltff. objected to mo. as a chose jugée on petition presented to the Judge in vacation by Defendr — whn same was rejected —

Poth. Chattels, p. 646 — Calltr ought to be delivd. to Prop^r upon a summary proof of the property — That Pltff was the prop^r & possessor, the Defendr as farmer being the servant of Pltff — Poth. Louage —

Stuart for Defdt — Proceedings at chambers in vacation not judicial therefore not final nor binding — No evidence of the Pltffs right the presumption of law is w^t the Defendr —

Mr Pherson.
Murray —

On mo. to continue enquête to vacation —

Roi ... a
Paré ... a
Perrault —

On mo to ex. Defdr on faits & artr —

Munro.
Porteous
E contrea —

On Defendrs mo. that Pltff shd. file in Court all books & papers of the partnership in his possn — at the Office, that Defendr may be enabled to make out his acct. thereon —

Beaubien for Pltff. says, that Defdt is alone in the possn of all the books, have violently carried same off from Pltff

Kemp. — Mansondal'

Action of Trespass for takg. a horse from poss. of Pltff.

Sol. Gen. for Pltff. Defnd. has claimed benefit of St. 24. Geo. 2. ch. 2 — & St. Jac. 1. — but they donot apply to any Officers, but such as are appointed & obliged to serve as such for a specific term. donot to special Officers for the exn. of parte. warts — as private persons are not compellable to serve warants, if they do so, they do it voluntarily, & ought to consider well the auths under which they act — The want. illegal — no crime specified — That had it been stated a crime to have been committed, it is still a nullity — being a general warrant — 2 Hale. 114. — 1 Bl. 556 — 2 Haw. ch. 13. s. 10. — Money Sol. Vs Leach. 3 Bur. 1742.

2 H. ch. 13. s. 37
2 H. H. p. 110 —
1 Str. 167.

Georgen for Defts — No demand made for copy of the warrt — as req. by St. 24 Geo. 2. ch. 2, as to the Officers executg. the warrt — Defts. are justifiable under the warrant whether legal or not 4 Bl. C. 291. ch. 21. — law settled already by Lord Mansfield in giving Interlocutory Jud. for proof 18 Octr. 1813 —

Sol. Gen. — The Officer is protected by the warrant, only where the warrant is regular — Case of Money & Leach action brot agt the Officers — 4 Burr. 175 —

Foretier
& vs.
St. Aubin

On Defendrs mo. to reject two depositions taken by Plff improperly —

On 21 March. Plff exd 2 Witss & enquête was contd to 22. on the 22 two Witss produced, their exam. was commenced, but not closed — on 23 two diffts Wt. were exd — from thon of 24 — & qs. Defr contends ought to be rejected —

Dorions
vs
Thompson

Action on deed of Sale —

Bender for Plff. — Defendt has made a tender, but ought to pay Costs —

Bourlon for Defendt — action ill. founded — Tender made of debt & Interest on 4 Jany, action instituted on 5th —

Bonvouloir
vs
Laraw —

On Rule to shew cause why another day obd. not granted for the contn of the enquête. —

L. Mo. Viger for Defendr contends Plff. not entitled to another day causes offered by the affidavit not sufficient —

over for want of papers,

Tuesday 5th April 1814.

B. Tessier
v.
Dumouchel

on Defdt's mo. to reject from record a paper filed by Plff with Replication —

The agreement between Plff. & Tr. Tessier cannot affect the rights of Defdt as to mortgage on the land — agreement hereby made subsequent to the institution of the action —

Bedard for Plff, this motion involves the merits of the action —

Cherrefils
&
Larocheliere
v.
Leger. T. Saisi

on attachment in hands of Tres Saisi upon Judgt —
Tres Saisi was heard by Mr L. Viger claiming a right that the monies in his hands ought not to be paid over to Plff but upon giving Security, as there are debts due upon the Land wch he purchased from the Defdt —

Sutherland
v.
Campbell

on Defdt mo. to put off trial, for want of suffr notice —

2 No issue of law can be tried by the Country, —
1. Blackst. —
Chitty on Pleads. — . — . —

The Pltff in his Replication to the justification pleaded by the Defendt — which is a matter to be enquired of by the Country, has taken issue thereon with the Defendt — but has concluded to the Court, instead of the Country, and therefore this being an issue of law, or rather an issue improperly raised, must first be disposed of before the Jury can have cognizance of it. —

Wednesday 6th April 1814.

Witness-day — No business. —

Thursday 7th April 1814. —
Witness-day —

Taylor vs Drenan

On Defendt mo. to declare facts particular, avers Boston to Pltff — objected to the regularity of service and that no sufficient delay, viz. 2 days has been given. — Facts & arts not pertinent. —

Lacombe
vs
Cuvillier & Co

№ 121.

On Pltff's mo. to reject part of plea made to evidence

Beauchein for Defts says he has pleaded to the merits & not to the exhibits. —

Saturday 9th April 1814. —

Lacombe
vs
Cuvillier & Co.

Part of plea. to exhib. —

Taylor
vs
Drennan

a day given to Pltff to come in & answer on 13th on payt. of Costs. —

Osborne.
vs
Finan. —

On defends mo. to proceed ex parte for want of a Replication
Stuart for Pltff. — contends that he cannot be excluded from proceeds. altho' he has filed no Replication —

№ 1233.

Bowker
vs
Jones. —

On Report of Experts —
Ogden for Pltff asks for Judgt —
Bedard for Defts. prays for time till next Term to communicate wt his client, the present State of roads & of the Country where Pltff lives, have prevented any communication

Bowker
vs
Jones —

action en declaration d'hypotheque. —

Ogden for Defend^r contends that Pltff has not made proof of his allegations —

That even if proof were suff^t the Defd^r has shewn by an Excep. per. that he has acquired the property by a title from the Sheriff since the institution of the action —

Georgeon for Pltff, the Defend^r ought pay Costs for his contest prior to his acquisition. —

Delabroquerie
vs
Lacoste —

Action en Revendication —

Pltff. contends that parties shd be sent before Arbitrators to account on the object in contest — the parties are at issue, and from the nature of the Contest —

even for parties to proceed to their proof —

Fullum dal
vs
Paré —

Damages on breach of Contract —

Bender for Pltff — £25 — advanced by Pltff^r thereby which he contends he is entitled 200^{th} — damages —

L. M. Vigé for Defend^t — The payt of £25 — ought not to bear interest, as the exhibit states that payt has not been made

the only proof of it being by the oath of the Defendt. on Facts & art, no. any debt being specified when it was adv and The wood was worth only 5/ p cord at the time of delivery & one half of that to be furnished by Defendt was to be p. 5/- & the other half 4/2. so that the damages ought to apply only to that part for wh. Defendt. was to have 4/2

Fraser & al
v
Weston — On Plffs. mo. to reject plea as not mentd. on abst of Exhibits according to Rule —

Perpes for Defendt — No list of exhibits in cause, as no exhibits were filed, therefore the Rule does not apply —

Monday 11th. April 1814. —

Fraser & al.
v
Weston. — The mo. rejected, the Court considers that the rule did not apply. —

Munro
v
Porteous — On mo. for Instt. as Defendt has not rendered his acct as req. by the Instt. of this Court

Torrance.
v
Coates. — On Defendt mo. to ex. Plff. on facts & articles. —
Ogden for Plff. states by affid avit that Plff is absent from the Country & cause has been fixed for trial by him on 15th —

Mears
vs
Cook. —

Actⁿ of assumpsit for boards, also of Actⁿ for said boards —

Beaubien for Dftˢ — The boards were never delivᵈ to Defendᵗ by Pltff — proof of demand not sufficient —

—

Sutherland
vs
Martin

Action on special assumpsit. —

Sol. Genˡ for Pltff. The promise is to pay to Pltff, if one Col. Robertson do not pay — Defendᵗ. is the principal debtor — and Protest has been made agᵗ Robertson for non-paymᵗ — when a person undertakes to pay on default of another, he is considered as principal Debtor. Obl. 447. —

Obl. 447

Beaubien for Defdˢ — The undertaking is only a caution by Defendᵗ. to Pltff, and not a personal undertaking — The personal Debtor was Robertson — The diligence done agᵗ Robertson does not amount to a discussion — Points out property belonging to Robertson — The debt was due by Col. Robertson as appears by Pltff's letter filed it being for money pᵈ to McScott for carrying out Patent to lands of Robertson —

Sol. Genˡ — Supposes cases on offᵗ Note may have been made — Nothing pleaded to admit Defendᵗ to shew that Robertson was the principal debtor — Pltff can bring no action on the note agᵗ Robertson he being no party to it — Not necessary to shew the existence of a debt — the paper alone is proof on the money Counts. —

Tuesday 12th April 1814.

Munro vs Porteous — Mo. over-ruled.

Torrance vs Coates. — Mo. over-ruled.

Fournier vs Bruyere — On defendr mo. - delay till 5th to file Exhibits given.

Labroquerie vs Lacoste. — On Pltff mo. to refer Cause to arbitration.

Stuart for Defd- not a Cause fit to be sent to arbitrs nor such as the Court can delegate such authority to arbitrs

Quesnel for Pltff. contends the Court has such authority 1. Prov. Cond. 246.

Beaugrand vs Boisvert & al. — action Petitoire - Hearing on exceptions of Defendt

Bourret for Defendt. Robillard - contends that the Interdiction of Beaugrand is informal & illegal, not having been done by examination of the party by the Judge.

That even if Interdiction were regularly made, yet Pltff does not derive therefrom Suffte authority to institute the present action, but a special authority became requisite - this action

being more than a simple administration of the property —
467 Rep. V° Interdiction. p. 443. Id. V° Curateur. p. 194
1. Bourjon p. 80. s. 3.

That Defend^t. is sued only in capacity of Tutrix to her minor Children whereas she has right in the property in her own right and ought to have been sued accordingly. — Just^t. not between same parties —

Rolland for Plff. Party ought to proceed by appeal agt. the Interdiction —

The Tutor, altho' he cannot alienate, yet can bring the action Petitoire, being an act of administration — 1. Pigeau. p. 71 — all actions, mobilieres & immobilieres, are of this nature —

The Defend^t. cannot be admitted to plead her right, which she has abandoned and gt. has been determined upon by the Court — Pothier, Oeuvres Posthumes - acquiescement empeche l'appel - N° 11. & 12. -

M. Vigé, of counsel for Defend^t — action au Petitoire, is not an act of simple administration — but required a special authority. the same as if it had been to alienate or purchase real Estate for the person interdicted. — The Defend^t. cannot come agt. the interdiction by any other means that by pleading its insufficiency, not having direct interest in the thing. — No proof that the party interdicted ever was heard or consented thereto. —

Brown. v Mure.

Action on Defend^t Special assumpsit —

Ross for Defd^t — Defend^t was never bound - promise conditional and the condition never accepted by Plff. namely on Plff undertaking

to pay all the debts of the Concern of Brown & Rankin — On contrary Pliff proceeded agt Rankin, in same manner as if the Defendt offer had never been made, by taking the note of Rankin for a much larger sum than £600 offered by Defendt — The Pliff about a year after wrote to Defendt — that he accepted the offer made by him, but he had altered the condition of offer made by Defendt and has not given security for the outstands debts of Brown & Rankin — Pliff further prosecuted an action agt the Curator to Rankin's estate in Oct. last upon the first note given by Rankin to Pliff —

Stuart for Pliff. The reasons given by Defd. verbally, & those contd in his pleadings are different — 1. Non assumpt — proof has been made to establish the fact — under this plea, the existence of the condition is not put in issue — 2d plea — is same as first — 3. That Pliff has taken security & proceedings agt Rankin — Pliff had a right to do so, was a matter of prudence — there might, & there were, other matters of acct between the parties Pliff & Rankin upon which the extra notes were given by him — beside the prosecutn — the prosecn is no release of the security — 4th — part of 3d plea —

The Defendt in the security refers to an agreemt already effected between Pliff & Rankin — & undertakes upon failure of Rankin to pay —

Pliff has shewn the existence of the debt by Rankin to Pliff as by the correspondence between the parties prior to Defds security — No proof of the payt of the Debts of Partnership of Brown & Rankin was necessary, it was not a condition of the agreement or security,

nor

nor is the point put in issue by the plea. —

Proteau
vs
Larocque

action of Legitime — upon drafts of Interlocutor drawn by the parties. —

Wednesday 13th April 1814. —

The King
vs
Mosher

on application for Hab. Corpus —

Delabroquerie
vs
Laviolette

Defendt mo. granted —

Osborne.
vs
Finan —

Plffs mo. rejected. — The Court considering that altho' the Plff had not filed a Repn, yet the cause could not proceed ex parte agt. him, but that the Deft might move to fix the cause in the ordinary course. —

Fischau. —
Jackson.

Plffs mo. for hearing — objected. that the Cause should be first fixed for hearing evidence — ans. that Action is on an "acte authentique." & the Plea a general issue. —

Thursday 14th April 1814.

Fischau
vs
Jackson — Mo. granted.

Taylor
vs
Drenan — Action on deed of Lease for rent of a farm, acte authentique — Defendt. pleaded that various articles & provisions had been at different times furnished & provided by the Defendt. in paymt. of the rent. — to prove this, witness were produced by Defendt. but rejected, as being in paymt. of a debt established by an acte authentique, & also as being above a hundred livres — The Defendt. then examined the Pltff on faits & articles, who admitted, that a great part of the articles in question had been furnished & provided by the Defendt. but that [illegible] quantities of hay had been deliv'd to Defendt. to a greater amount than the articles so furnished, & in paymt. of the same —. Upon this the Defendt. moved that the matter should be referred to arbitrators to ascertain the balance of their accounts — This was objected to by the Pltff, who claimed a right to proceed before the Court — but the Court granted the motion ~~so far as regarded the~~ articles.

Friday 15th April 1814.

Munro
vs
Porteous.

On mo. of Defr. to extend time to under art to first day of next Term.

Pltff contends that auditors ought to be appointed to settle the account in Vacation.—

Fischau
vs
Jackson

Action on Obligation.—

Pltff asks Judt—

Perrault
vs
Mathews

Action by Pltff for work done as a Carpenter—

Defendt contends that work has not been sufficiently performed—

Experts ordered.—

Marmier
vs
Bautron

Action for balance of ~~pay~~ on a deed of Sale—

Stuart for Defr. objects as to interest charged ~~of~~ ~~four~~ years, it ought only to be allowed for 3 years, as the interest was to become due ~~only~~ one year after the date of Sale.—

Guibord
vs
Fullum
&
Surgeon
Intervs

Action on agreement to pay Pltff certain damages for ~~cancellation~~ between Pltff. & Defrs. son.—

Lacroix for the Intervs Party claims the money under an assignt. thereof made to him by the father of the Pltff, who at the time was a minor. —

Bender for the Pltff contends that such assignment could not legally be made. —

Osborne. — }
" Finan et al } On Defendt mo. to quash the writ & process, the servis on Defendt Finan being irregularly made —

The Affidt has not pointed out where the last domicile of the Dt Finan was in the City of Montreal, at which the servis is stated to have been made —

Stuart for Pltff. contends that when a man makes a contract there he establishes & leaves a domicile quoad that contract. —

Ovr.

Sutherland }
" Campbell } Hearing on law on the exception taken to the plea of Justification pleaded by Defendt —

The Defendt cannot be admitted to plead a Justification to defamatory words a libel — refers to 2 Bur. 807. & 1232 Astley. v. Young — also Rep. Vo Injures. p. 230 —

Stuart for Defendt — contends that injurious words may be used in defence of a man's right without an action lying for them — That the words here used were in the course of

a

a Judicial proceeding, and defendt after right after party, and not to calumniate the pltff. —

Dig. Vert. 1. Sanders. Lake. v. King — Petition to Parl^t —

3 Selwy. N.P. p. 926 — 2 Esp. N.P. 505 — What is necessary & relevant to the matter before the Court, not actionable —

2 Hawk. 132. 1 T.R. 110. Wetherston v. Hawkins —

8. T.R. 293. Rex. v. Wright — 2 Bur. 807. Astley v. Young. Libellous language therefore used in a Judicial proceeding not actionable — How far it was necessary for the Defendt here to have used the language in question, must be tried before the Jury, whether there was suffict ground for it. ~~for the language~~

Ross. for Pltff. The wantings in question were ordered to be rejected as not being part of his defence, & he cannot now use them as having been made in his defence, what had been so ordered to be taken away. constituted no part of it —

2nd. In the Plea of Int. sufficiently set out & stated without shewing

Saturday 16th April 1814.

Macé. v. Bricault. } On mo. for Judgt. – action in separation. –

Daillebout v. Duchenois & Coffin. Curt. } action of aut. av Defendt. as mandataire of Pltff. – L. M. Vigé for Defdt. – The Defendt. was not the agent or attr. of Defendt. but the agent of Coffin, who was the Attorney of the Pltff.. The Pltff not having any knowledge of the doings of the Defendt. cannot call on Defdt. who is besides interested to account with Coffin under whose authority he acted – That as this Coffin be in the Cause, Defdt. ought not therefore to be held to aut. w^h is in this Cause –

Laroix for Pltff – If Coffin were dead, the Defendt – w^d be exonerated from all account according to his doctrine – Nº 51. 87. 96 – Cont. Mandat –

Beaubien for Coffin – That he cannot be consid^d. to be the Garant formel, this not regarding any real right – That Defendt. is the mandataire of Pltff under the authority he held from Coffin –

M. Vigé for Defendt – No privity between Pltff & Defendt. to entitle him to the amount he claims –

Saraunet v. England – } action by Pltff as Curator to absentees –

Bedard for Pltff. – The Defendt. has alledged fraud in the appointmt of the Pltff as Curator – but of this there is no proof – As to proof of the Insolvency of the Pltff, it ought not to be admitted –

Beaubien for Defdt — The fraud is proved by the untruths told by ~~Defendt~~ Plff — in his petition for the appointment of Curator — The late Sarault was considered as representg. only the Menetrier and not the heirs Conquembre & so judged by this Court — & therefore the heirs & representatives of the late Sarault cannot claim more.

Sarault
vs
Gravel
&
Lehemp. Gar[t]

Action for balance on deed of Sale —

L. M. Viger. shews payt. to Decease now represented by Lehemp & as Gr[t] he claims his indemnity in case of Evict[n] of him —

Beaubien for Defd. shews payt. made to Mr Fowler as Att[y] of Menetrier.

Bedard for Plff. Decease had no authority to receive the money —

The King
vs
Mc Cord

On Rule to shew Cause why a Conviction before the Justices ~~before~~ shd be quashed — on Plaint for prosy[n]. with[t] Licence

1. The Justices had no Jurisdiction over the offence — The Ord[e] 17. Gu. 3. ch 12 — authority given to one Justice — in gl. several may act, but not a Court — Conviction before Court of weekly Sessions established by Law — irregular — Com. Dig. tit. Justices Peace B. 1 2 Str. R. 1256.

2. Proceedings on the face of them are contrary to Law — action was not a q.t. Inform[n]. but brot. in the name of the Informant. Deschamps. 2 Haw. ch. 26. S. 17. 20.

3. The complaint was insufficient — the conclusion only to pay the fine, whereas it ought to have been as well for the Prosecut. as for the King. 2. Haw. ch. 26. s. 21 —

4. No evidence was adduced on the complaint —

5. The Justification pleaded by Defd. was sufficient — namely under St. 45 G. 3. ch. 14. & 48. Geo. ch. 23. for erecting a bridge at Sault-au-Récollet.

2. Wilson 382.

6. The Defendt. was condemned to pay only one half the fine as the King was no party to the complaint —

1. Vejé for Prosecutr — The Justices had Jurisdiction over the Offence

2. The Justices adjudged the ½ fine to the King —

Filion & Dagenais

Action de Voie de fait. —

Rolland for Pltff prays Judgt — Poth. Poss. Mt 123.

Sol. Genl for Deft. — The Pltff held the house at the will of Deft. as his tenant ~~at will~~ without lease — Defendt — was only the servant of Deft — so admitted by the Fait & articles being proved —

Williard & Winchester & Cummings

On Rule to shew Cause why Cause shd. not be heard on the merits. —

Burton
Manning } Cause considered as argued —

Burton —
Phelps — } Same —

Genus. Tutr
Lefevre } Action to render acct — agt. Defendt. who married the mother of the minors who now demand the acct —
Paperman for Plff claims upon. of P.V. of Practicers —
1. To the mobiliers. agt gt. no objn

2. Poss. of part of buildings —

3. acct of the fruits & revenues. altho'. this part of prop. is less injurious to the minors — yet complies therewith — The arbitrators state their opinion that Claiborn ought pay pension to Defts. but Practicers say noths. on that subject — There is noths. charged ag the minors of Defts. for their support —

4 That Defts be held to pay Costs —

5 — No mention of the produce of the land the year the wife of the Defts. died, she have declared before the grain was cut —

Rolland for Defts —

There is noths. in the cause to shew the number of children the Defts had who were educated at the charge of the Community —

The exception pleaded by Defendt — shews action ill founded —
The Interlocutor Marque irregular, & the proceedings of Practicers thereon irregular —
No interest nor costs to be granted to Plff.

Objections agt. acct—

Vict. 21. Octr. 1667

Produces certificate payt. of Droits Seigneuriaux, qt. were reserved to him by the Proviciens — & other small sums — & which he contends ought to be allowed to him —

Vigé in reply — Defdr. cannot bring again under the consideration of the Court the matter determined touchg the Exceptions —

That no papers can now be admitted to be filed & establish a new demand, —

Objects to entering upon the new demand now set up by Defdr —

Contends that Defdr. shd pay Costs —

Maranda
vs
Cousineau

Question of account — —

Stuart for Plff — Plea of Defdr. that Plff shd be deprived of her rights in the Comty unfounded — can apply only to Dower & other benefits given by husband — but it was wt the knowledge & consent of Plff late husd & therefore even in case of Dower she is entitled to it —

Polk. Domain. No 2577

Bedard for Defdr — Since the Judt dismissing Plffs action in Separation in 1800, she lived separate from her husband & no proof of it — Settlement has been made pursuant to that Judt — Plff not entitled to her rights in Comty. 11 Octr. 1805 Judt to that effect — At all events the Plff shd have no rights in the Community from the time she left the Defdr's father's house —

Dorions
"
Crosse

Judt. to be drawn up by parties —

Provost
"
Provost

action on deed of Sale —
Lacroix for Defdt — sets up debts due on the land —

Berlinguet
"
Campeau

action for work done as a Carpenter — On Report of Experts —
Bidard for Defd. contends Plff ought only to have £3 2 s 4d to be held to pay Costs —

Prudhome
Johnson —

action on deed of Sale —

Stuart for Defend — The Plff ought to have sued as Legatee of her late husband — Produces two receipts No 1 & No 2 for £100 each. Fiji for Plff. the reglement de compte between the parties subsequent to these receipts ought to prevail over the receipts — particularly as at the time it was have been paying £50 more than was due on the Contract —

Monaque
vs
Tessier — } Over to Monday —

Monday 18th. April 1814.—

Lanctot. —
vs
Lanctot. —
& } The Opposn admitted to be collocated only for the
Raymond. } balance due to him. —

Daillebout
vs
Duchenois } The exception dismissed. —
& }
Coffin Qual

Sutherland
vs } Plea of Justification over-ruled. —
Campbell

Oldham. —
vs } Action popularie — to remove a dam built by Defendt
Dumont. } in the River Jesus from the main land to the Isle Spinard —
Defendt. contends that no damages can be allowed in an action
pop — but otherwise decided in case of Lavaltrie v. Brugnier
ap. 1800. & Grey Nuns. v. Harris. —
Depr. has no right to obstruct any nav. Riv. 4. Freminville 418 —
Ordes des eaux & Forets — 4 Frem. p. 434 — 422. —

Rolland for Defendt. The Plff demands that dam be put in the same state & condition as it was before the action - in that case the dam wd be prolonged - The River is benefited by the Dam - a sufficient opening left for Canoes & batteaux -

Evidence to shew that water was higher in the River des Prairies in the Spring 1811. is weak & insufficient - The contrary evidence of the Defendt is precise & clear - That the course of the water is not changed nor thrown into the Riv. des prairies. -

2 Henrys - 229. -

Ogden in reply -

Monarque
vs
Th. Taylor
& Taylor opp.

On rule to shew cause why a contrainte should not be granted at her prevents. Sale of the effects seized

Boston for Oppt - No proceedings were had on the exon after her oppos. was dismissed Ord 1667. art. 13. tit. 9. - Seizure null by appointment of relations as guardian -

2. That effects must be sold in one year after seizure - Cout. art. 172. close unique - and in two months after the oppositions disposed of

Poth. Proc. Civ. p. 183 - Rep. de Jur. vo Gardien. -

The seizure having ceased the right of the Plff. cease -

M Beauto.
q. t. —
23 Kegs Tobacco
& Dawson claimt.

On claim of Dawson —

Sol. Genl for Lybellt. The Kegs for of the permit was granted were branded — those seized not branded —

Sullivan for the claimt — 20 The Kegs were seized in Montreal in the store of the claimt. & the three others on board Ship going to Quebec — The permits No 1. & No 6. altho' regularly granted are not yet entered in the books of the Custom House at St Johns as the law requires — Has proved also that Kegs of Tobacco & other articles have been allowed to pass the Custom House without being branded — It has proved that 9. of the Kegs were sold to Claimt by another person & duly entered —

Sol. Genl — 1. Hen. Bl. 189. no parol evidence admitted after the written agreement — Witness for Claimt. do not swear positively & Verdict ought not to be entered —

Caroutaux
& ux
and. Leger

Action for delivery of wheat —

Laroix for Defd. says, he made several offers prior to the action — Defendt. entitled to Security — which has been offered since the action & therefore Defd. ought to have his Costs —

Langan. ⎫
Charpentier ⎬ à demain
Mr. Langan ⎭
mis en cause ⎭

Morin. ⎫
vs ⎬ Action on Special assumpsit —
Deschambault ⎭ Bedard for Plff contends that the evidence is sufficient
Rolland for Deft — says that his undertaking was conditional
and was never accepted by Plff. —

Bleigné dit
Darry. ⎫
vs ⎬ Action on deed of Sale —
Normand ⎭ Stat. to be drawn —

Foretier. ⎫
St. Aubin ⎬ Action for certain droits Seigneuriaux
Judt. to be drawn —

Dillon. ⎫
vs ⎬ Action for malfeasance in Office. —
Ermatinger ⎭ The original action was in the name of Richd. Dillon
Ins. — the present action is in the name of Richd. Dillon —
action rett. 14 Ap. 1812 — States that Plff obt. Judt. on 1st Oct. 1813.
No such Judt. as stated in the Declaration, being to be ap.
Richd

Richard Ball the Indt. of Reuben Ball — No evidence of any Indt. filed in the Cause — No evidence of the Sheriff's Return — not signed. — There ought to have been a Vend. Epps. of the goods seized — and not a writ of fi. fa. — under the writ sued out in the name of Rd. Dillon, & not of Richd. Dillon Junr. —

Stuart for Plff — was admitted to file originals upon grt. action instituted & withdraw copies —

Taylor — v Drenan — } action for 2 quarters Rent of Farm — & for damages for wood cut down on the farm —

Stuart for Deft — action irregular, as Debt & trespass have been joined in the same action — The charge as to cutting timber too general & Deft. cannot answer thereto either by admitting or denying it, & more particularly as he has a permission to cut card wood on the farm — 3 Wentworth. p. 445. 498.

Ker — v Lacroix — } action to recover damages for deceit on assignmt. to Plff — on 30 Sept. 1796 —

Stuart for Plff — assignmt. of rights in the Fief De Villeray, wch. Fief was found not to exist. —

Beaubien for Defr. The assignt. in question is a transport de droits litigieux - & therefore has no right of action - assg.
Poth. Cont. Vente. Nr. 583. - a Sale without garantie is a Sale of a droit litigieux - The fact proved by evidce of Mr Perault, that Pltff knew it was a litigated right of he had acquired - Exhib. Nr. 15. shows that Mad. Lavoie had a right in the Fief Deviliers - When the right sold is uncertain there is no right to demand restitution - It was a Droit incertain Vente. 186 - qt. is same thing as droit litigieux. -
There ought to have been an express garantie in case to warrant the action - Id. Nr 187. -
Poth. Vente. Nr. 586 - The party even in case of dol bound to restore only the price which he received - Not entitled to the monies he has laid out on the lawsuits - Id. Nr. 587. -
That Mad. Lavoie was indebted to pass the act of assignment in question - The Defendr - is prosecuted as Legatee - but he has recd. nothing from the Estate of Mad. Lavoie - & is bound for the debts of the deceased only amounts to the emolument he draws from it -
Stuart in reply - The right in question is not a droit litigieux the act itself being evidence of a fair purchase - There is no exclusion of the garantie & therefore it holds de droit - Poth Vente. Nr. 559. - that is to the extent of the thing sold or its value damages - 1. Expences of prosecutions - & 2d. What Pltff. wd have received, had the transfer been effectual -

Tuesday 19th April 1814.

Dow. v. Nelson et al'. & — a cause under delibere, the peremption cannot take effect —

Daillebout v. Duchenois & Coffin. Gar. — on question whether Pltff. & Defnd. shall be allowed a motion for fixing the Cause —

Deaves v. Jones — on mo. for a Com. Roz. to England — Objection — the delay too great & application too late — mo. withdrawn.

Wednesday 20th April 1814.

Labroquerie v. Laroche — Rule of preference to Experts —

Guibord v. Fullum & Surgeon Intervs — Intervention dismissed & Judgt for Pltff

Arnoldi v. Perrault — Pltff admitted to his Serment supletoire —

Brien dux
& Dupuis

Judgt. ag. Defendt. as Caution, but only for the original debt, and not for the Costs incurred by the Pltff. on the discussion of the principal —

& E.

But if the discussion had been pleaded by exapt. by the Defr it must have been made at his expence —

Oldham
& Dumont

Intalouter to Export —

Monarque
& Sayler
&
Sayler Oppt

Rule for attachment discharged, as the Saisie has become périe, for want of proceeding thereon within the year —

Marchand
& Skakel

Motion overruled

Lamothe
& Fouche
&
Bourthillier
Opp

Opposition dismissed

Hunter
& Fry
& Econtra

Action dismissed, for want of proof of the Seal of the State of Vermont — Incid. Demand also dismissed for want of proof

June Term. 1814.

Wednesday 1st June 1814.

Bricault. — v Bricault. —

On mo. by defdt. for further ex. of wits. —

Ducles Descalle v Sauvage —

Defdt. ent. appe — Pltff mov. for Jait a art. but gave no notice of mo — Obj. that a notice sh. have been given of mo. —

Hillyard. v Winchester. — & Cummings, mis en cause pour rep: d'instance. —

On Pltff. mo. to discont. instance as. Sarah Cummings who has been put in the Cause as the representative of Defdt —

Gale for Defdt. in Repe. says. Pltff cannot discont. the instance without discont. the whole Cause inasmuch as the D. Cumgs has been admitted to defend the Cause in the lieu & place of Defendt —

Dow. — v Nelson. — & Biss —

Mo granted. —

Thursday 2. June 1814.

Discelles v Sawyer } Mo. rejected. —

Hillyard vs Winchester & Cummings } Mo. to discontinue granted.

M

M'Kenzie v M'Gillivray } On Petts mo. for admission of evidence —
Objection by Mr Ogden for the Defts that 14 days notice had not been given — & that mo. was too late, ought to have been made on the 1st day of the Court —
Objection waived

Selby v Exors of M'Tavish & Widow M'Tavish No 1 Claimt. } On claim of Mrs Plenderleath, widow of late J. M'Tavish. for arrears of annuity, & said annuity secured to her on real estate — claims privilege from words of the will —

Stuart for the Exors. States that the appears a deficiency of assets, & therefore there can be no preference — all legacies must abate proportionably — Only consideration is as to the mode of investment so as to secure the annuity —

Selby. —
Excrs. vs. M^c Tavish
& Archb. M^c Tavish
No 26.

On claim of Administrator, & of Brother & Executor Catherine M^c Tavish, one of the Children of the late Donald M^c Tavish, uncle of the Testator —

Ogden for Administr admits that Archb. M^c Tavish is the Exer & brother of Catha. M^c Tavish — but contends that as Admin^r is entitled to the claim —

Stuart for Defts — M^r Fraser was illegally constituted Admin^r — his appointm^t being by Arch^p B. of Canterbury whose Jurisdiction extends only to England, whereas the late Catha. M^c T. died in Scotland —

—

On claim of John M^c Tavish as Tutor to Mary & Ann. M^c Tavish No 2.

claims legacy to Pupil minors by Testator. — —

Ogden for Claim^t — although the monies bequeath^d have not been vested, yet the interest ought to accrue to the legatees —

2 Bourj^n Tit. Testament. — Interest due from the death of their father —

Sol. Gen^l for Wm M^c Tavish, Residuary Legatee —

There being a deficiency of assets, the Interest ought not to be granted to the prejudice of the Residuary legatee — The words of the will, are that when the money shall be vested, when it could be withdrawn from the business in which it was concerned — when so vested to bear interest — &

again

again that none of the legacies sh^d be paid before the expiration of seven years —

That Interest ought not to be given to the prejudice of the right of the Residuary legatee for his Legitime. There is no Interest due upon a legacy but from the day of the demand —

2° Bourj^e 234 —

Where a term is limited for the payt of the legacy, Interest can run only from the expiration of that term, even to Children. —

3 Dec. Arrets — 856. V^o Interets —

Stuart for Dfo^rs contends that Interest can arise only from the money invested — Testator has not directed Interest to be paid — allowable only where it is a portion hereditaire & it does not appear, that the legatees here were the heirs of Testator, nor do they claim their legacy as being a portion hereditaire. —

C. 234

On claim
John M^c Tavish
as Tutor to Simon
M^c Tavish —
N° 3.

} Claim on same as for Mary & anne M^c Tavish —

On claim. —
John M^c Tavish
N° 4. —

} claims his legacy with Interest — under words of the will —
The last clause in the will must controul the preceding — & therefore Interest could not be demanded before the legacy was payable —

S. & Gt.

Claim of ~~Jos. Frobisher Henry et Henry as Tut. to Hrs of Mc I. — No 38.~~ No 28.

On claim of Legacy, wt. Interest —

Sol. Genl. The Exrs could not pay Interest until money came into their hands. It was only at expiry of 7 years. —

On claim of Hugh Fraser Trustee of Marjy. McTavish No 30. —

Objected that the Trustee is not entitled to this claim, as the money is vested in Marjory Mc. Tavish and not in her Trustee —

On claim of Hugh Fraser & al. Trustees for Poor Relations No 31.

Only question is as to arrears — whether from the death of Mr Mc. Tavish, or from time of the Investment —

On claim of Alex. Grant

Beaubien — claims interest from decease of Testator & from the hunt have been carried into effect by the Exrs. —

Seduc. v Dufour —

Damages on Sale of a horse —
Bender for Dfr. action irregular — ought to have been an action to rescind the Sale — objects to No 1. & No 4 of testimony of Wit. the question being above value of 100 Rs) — The Vice in question not such, as

by law Pltff can have his action, not being a vice caché, but apparent. —

Taylor
vs
Drenan.

On Report of Arbitrators. —

Friday 3. June 1814.

Taylor
vs
Drenan

Order for Arbitrators to proceed de novo —

Labelle fils.
vs
Vandandaigue

action on deed of Sale —
Lacroix for Pltff. states that Defd. has set up an Incid. demand, to qh Pltff his set up a new demand as states in ~~deed of Sale~~ Mart. Contract. —
L. M. Viger for Dfd — admits demand in chief — Incid. demand founded on lease of a farm, rent of qh payable in wheat — as to value of the oxen claimed by Pltff on the Incid. demand — objects to value, qh ought to be limited to the time qh due — wd be about 10 dollars. —

Pre Beauliac
vs
Jn Dessercy dit
Lincourt —

action of assault — Trial by Sps. Jury. —
Verdict £10. 0 Costs as in Superior Court —

Monday 6th June 1814.

Spalding
vs
Racey. —

action of assumpt. on Sale of hops —

Stuart for Dft. Evidence only of Defts admission
qd was qualified, some of the hops being damaged,
agrees to pay £17. 10. — contends the admission cannot
divided — No evidence that hops inspected by
Storrs were same as sold by Pltff to Dft. —

Lacroix.
vs
Cuvillier

Action on Promy. Note —
Stuart for Defdt pleads Prescription. — objects to
insuffcy. of proof of interruption pleaded by Pltff, as the
acknowledt. made by Defts in the deed of Cession, does
not apply to the note in question. —

Over from want of paper —

Alexandre
vs
Douglass

On mo. for delay to plead. — Granted. —

Ritchie.
vs
Dunlops.

On mo. to remit the Com. Rog. to perfect the return ~~of their Comm Rogre~~

Ross for Dfts — objects to the right to return Com. to perfect testimony of any Witn as it was the duty of the party to get the depositions correctly taken down — In case of an omission at bar to ex. a Witn to a particular fact, it is not allowed the party to bring up Witn a second time after his depos^n has been closed to speak to the fact so omitted —

Ogden for Plff — The Witn is the agent of Defts — and interrog. to a fact done by him, to gt he ought to have given a perfect answer —

Allen.
vs
Pearlstal

On Plffs mo. to reject an Intervention made by the Defend^t in this Cause — as irregularly made, as the Defts being a party to the suit such Interv^n became unnecessary — The Interv^n on the return of the Sheriff upon an Exon sued out agt the goods & Chat. of Defts —

Reps. de Jur. vs Jugement — Interlocy order can be revoked & corrected —

Sol. Genl for Dft. — The Deft never appd in the original Suit have made default — he could not therefore be heard even in the Original Cause, much less upon new claims coming in by opposition on the Sheriff's return —

Stuart for Pltff. Every party is before the Court by the Kings writ, whether he enter appearance or not to the action — and altho' he may not contest that demand, yet he is entitled to appear to every new demand —

—

Douglass
v
Cartier. —

On action of Complainte. —

Stuart for Pltff. prays Inspt. on evidence adduced

Sol. Genl claims a day to ex. evidence — granted till to morrow. —

—

Laperriere.
v
Duplessis.
&
Tremblay Gar.

On action for recovery of Goods & Rentes —

Quesnel for Pltff. contest between defendt. and the Garant —

Stuart for Deft — he is entitled to his recourse for the the sum demanded, on the clause of garantie in the deed of Sale to him by the Garant. —

Bedard for Gar — the claim founded on an error in the

the deed of Sale – quitte tant du passé qu'à l'avenir – as if the land had been held in franc alen, which is not the case as is evident from the other clauses in the deed. –

Rolland v Languedoc } Report of Exp– noth^s said. –

Tuesday 7th June 1814

Lapierre v Duplessis } order for proof. –

Lehuup. v Labadie & Legueay } order to ex. ~~Lehuup~~ Legueay on oath. – Dep^t

Ritchie v Dunlop } Mo. rejected – The insufficiency of return not appearing as stated upon the answer of the Wit^s –

Mower v Powell } On Defend^r – mo. for extension of time to plead Objected – Plff has had no notice of motion – Motion sh^d have been made 24 hours before expiration of time to

to plead – whereas time expires to day –

Drean
vs
Fraser –

Mo. for hears –
Butters obj: Defd. had writ to examine –
Sullivan – ought to have moved for ex. on first day of Term

Osborne
vs
Finan et al

On mo. to quash writ, from insufficiency of service. ~~Quash writ~~ Sum

Ross for Defts. return does not state at what place or house the writ was served, upon Finan – The D. Finan has no domicile in Montreal, the service sh. have been personal –

Stuart for Plff. return does not state that the Defts has an actual domicile, but that service was made at his last domicile, & therefore the return not contradicted –

Dillon,
vs
Ermatinger
Sheriff. –

action for negligence of Office. –

Ross for Defts – Where Sheriff appoints a Gardien he is not responsible for the loss of the effects by negligence of that gardien. The ~~Attach~~ attach. ~~was~~ ordered out ~~by~~ is stated to have been

by

Richd. Dillon Junr. aft. Reuben Ball in April 1812.
The Judt. rendered on this was, that the things seized should be sold — Pltff did not sue out a Vend. exp. to sell those things but sued out a writ of fi. fa. upon wh Dfe made a return of nulla bona, as he could not under that writ seize again what had been already seized under the writ of Attachmt — The action is founded on this return as false, but the return is regular & none other could be made, unless Pltff had shewn that there were other goods to seize — It is stated in Declr that Pltff obt. a Judt. agt Richd. Ball, — whereas it appears it was agt. Reuben Ball —

Stuart for Pltff. The Sundries are the agents of the Sheriff and he must be responsible for them — Nothing shews on record that there is in Montreal another Rd Dillon besides the Pltff — The Declr in the original cause is in name of Richd Dillon, the writ of attachr is in the name of Rd. Dillon Junr — this a clerical error, of wh Defts, a third person, cannot avail himself, after he had seized the effects under it — It is not the practice of the Court to sue out a Vend. exp. but a fi. fa. where goods are seized by Sheriff on attachr & under the fi. fa. the goods being already in the hands of the Sheriff he proceeds to sell them — The diffe between Richd. & Reuben not material — there are 2 Counts in declr in one of wh it is correct — & if there had not, it evidently appears to be a mistake by stating it to be — "the said Richd." referring evidently to the true name of Pltff

Monet
vs
Magnan

On defend^{r} mo. to quash process as not have been served in time, nor personally on Defd^{r} —

Bender for Plff. Defd^{r} ought to have raised this objection on the day of the return — but a default was allowed — & obj^{n} taken after and for purpose of delay — The Return of Sheriff is regular & shews service to have been made in time and also on Defd^{r} personally —

O'Sullivan, contends that he is entitled to a day to make his proofs on the allegations stated in his motion —

—

Logan —
vs
Taylor —
&
Seminary
Interv^{s}

On Opposition of the Seminary for Lods & Ventes —

Stuart opposes claim of the Seminary and states that the Gentlemen of the Seminary of Montreal are not a Corporation & cannot support their opposition in the manner set out by an attorney — That the names of the parties opposing not regularly set out. — The Replication does not raise any issue on the Plea of Exception, stating merely that the Opposants are Seigniors which is no answer, but on contrary admits, as he says notwithstanding all the Exception says they are entitled to

That the Seminary of Montreal, is no Community - but if it were, they come irregularly before the Court - if they are a Corpon - they must have a Corporate name q^e ought to be used - & claim ought to be in the nom collectif or in the name of the whole body - 5 Com. 553 - 1 Pigeau 76. 77. - a fondé de procur^n can only instruct, but such character cannot maintain an action - but must be in the name of the administrators of the Communauté. for & on behalf of the Comm^té the title of Gentlemen Ecclesiastics, not sufficient -

Sol. Gen^l for Oppt^s Com^té may sue collectively or by Procr - Denys. v^o Com^té. N^o 33. - Title de Gauret - 1 Domat. 166 - Fer. dic. v^o Corps. 2 Domat. 108. 1 Edits & Ord^ces p. 80 - Establish^t of Seminary at Montreal, and as a distinct Corp^n from the S^t Sulpicians at Paris - Id. 325 2 Vol. 289, where they are agn mention^d - were a Corp^n at the Conquest & held rights, & by the Capit^n they were allowed to retain their property as they then held it - the King has given instructions in regard to them, directs their number to be kept up - & if he had been silent, they wd have ret^d their rights same as before the Conquest - It is enough that they claim as Seigniors in possession - & as a Com^té under a certain name q^e the Oppt. is not entitled to contest. 8 Poth. on Cout^m d'Orleans - Denys. Quest. d'Etat. N^o 2. & 3. Dec. Fer. v^o Quest. d'Etat The Oppt. cannot contest the quality of Seminary - Poth. Fief, p. 119. - Laurent v. Impey 14 June 1796. contested that

they had no right to sue by their Superior or Attorney.— Where they are in possess.ⁿ the King alone can contest their right — 4. Vol. Memoirs du Clergé — Question D'Etat cannot be contested —

Stuart in reply — Whatever etat the Seminary can claim under, they must shew themselves it, & can be called in question by any party interested — This matter not pleaded by the Seminary, that they were in possess.ⁿ of such etat — wh. etat will be maintained, until it come directly in issue by the Plea of the adverse party — The Seminary being in poss. of Seigniory is inapplicable — Only question — have they admitted by their plea that they are no Corporation — this is evident — & therefore Opp.t entitled to say they have no right to stand before the Court —

The letters Patent referred to 1 Edit. p. 80 cited, were granted to the St Sulpicians at Paris to enable them to establish a branch of their House at Montreal, & therefore House here was no separate House & could have no separate rights —

That a Communauté cannot sue by a Procureur, but by a Syndic — or administrateur —

De Labroquerie
vs
Lacoste

On Report of Expert arbitr.

Stuart for Dft. The arbitr. have gone beyond the powers delegated to them by the Court — by grants indemnities for objects not demanded, —

Wednesday 8th June 1814.

Witness day.

Drean v Fraser — On mo. to reject dep. of J. Geo. Degen a Witness for Plff. & also to examine Plff. on fait & articles.—

Friday 10th June 1814.

Drean v Fraser — mo. to reject dep: of Degen rejected, the other part of mo. granted. —

Darcol v Milne — Plff's mo. granted — for setting down cause for hearg.—

Mower v Powell — day to plead till 10th Sept.

Bricault v Bricault — On mo. that one Jas. Cartier shd. be condemd. to pay fine for non-attendce as a Witness before Practicien.

Ross for Mr. Cartier, 1st too short notice for his appce — 2d. no tender of reasonable expences —

Bedard for Plff — delay suffn — no demand for expences —

Beaugrand vs Boivin & Robillard

Petitory
On action ~~for possession of a~~

Rolland for Pliff. Defts. claim property under a donation from the late Robillard — Pliff has shewn that at time Robillard was in a State of Demence, & imbecillité, & could not make such a deed —

Vigé for Defdt — The Pliff has shewn no title to the property, & was never in the possession of it — no proof that he had ever any tradition made to him of it. The Defendts have denied the right of the Pliff in the property & req. of him to shew a title — refer. case Gerrard & Barnet. Indf. 18 June 1806.

Rolland for Pliff. The Defts admit the sufficiency of the Pliff's title by setting up the deed which they hold from Robillard. —

—

Boivin for Robillard & Boivin Gart.

action to recover half of a Rente & pension Viager pd by Pliff. on act. of Defts —

Vigé for Defts — has called in Mr Boivin who possess the totality of the land & bound to pay the whole rente

Ogden for Garant — No proof that Gart. possesses the whole land — & if he did in case of a garantie Simple

not bound to pay any thing to Defend. as it does not appear that she has paid any thing for him.—

Perras et al. v Taylor.

On mo. for Exon on Judt. in Court of Appeals. a Lacroix for Perrault, one of Plffs. says, the rule was serv. on him only yesterday being a holyday, & therefore irregular.— That rule was served only on two of Plffs. That Defend.— Taylor is dead upwards of a Year ago.— That no Exon can be granted by this Court on Judt. from the Superior Court— Henderson & Armour. v. Dieffenback.

Cottineau & a v Veine et al.

On acct. to render acct— & to proceed to a partition of property of Comty—

Rolland for Defts. 1. The Plffs. child. of Defd. Veine renounced to their right by their marriage Contract— Pothier Tr. Suc. De Comté sect. 1. No. 1. preface— 2 Bourjon p. 224. tit. 8. ch. 1. — No Inventory necessy. Id. p. 222. It is a Rente Viagere, qe. is considered as the property of the person who enjoys it.— Part. of a Rente Viagere to a parent is a legal stipulation— & child is bound by law to furnish it— The Plffs. here do not allege that the property on qt. the rente is created, belonged to the Comty—

2. Lets up Testament of husb. in favor of Defendt—

The will was indeed made before 1801, but the incapacity of the Legatee only can be considered, qst is covered by Tentation dealte after 1801 –

That Dubreuil is not bound to render any account, being a stranger, & not bound to act. for the property of a Commty in qst. & did not participate. –

Bedard for Plff – action lies agt. all persons in possess.n – That the stipulation in the mar. Contract of the Children cannot deprive them of their right to an Inventory Cant.e because it would be admitting the parents to make a prohibited advantage to one another of their property during their marriage – Poth. Don. entre mari & f. No 281. & No 167. as comprehending all the property as well propres as Conquets, & therefore null. – The authority cited by Rolland from Bourjon applies to case where the Stip.n is made in the mar. Contract between the father & mother & when there are no Children. – Testament not valid – so decided – in this Court. – Inventory ought to be made whether Caution is demandable or not, to ascertain the State of the property – That rents & pension, proceeds from property of Commty belongs for one half to the heirs of the deceased 2 Bouv. 252. – The Rentes were constituted long after the marriage of the plff – –

That even if the Rentes are considered as legal, yet Plff are entitled to the Inventory they claim –

Rollaud in reply. — The authority cited from Pothier on Donation mutuel is in contradiction wt other authors cited. —

Saturday 11th June 1814. —

Lacombe — v Perrault. — } action on sp. assumpt for sale of wheat. — Damages for non-performe of agreet

Beaubien for Defd — The sale between the parties is nulle — the act being sous seing privé, & not double. — Encyclop. de Jurisp. vo Synallagmatique. Poth. Obl. No 9. — Denizt. vo Double Ecrit. — No 1. 2. 3, &c cites also 17 Sa. Stat Trans. 29 Ch. 2. c 3.

Ross for Pltff. This is a mercantile transact & the rules of Evde such as in England must be received —

Turner & Co. v Kinsler. — & Rastoule, oppse — } On opposition of Rastoule. —

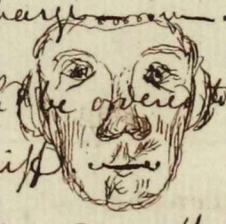
The Oppt. claims monies levied on a privilege for house rent —

Stuart for Pltff. The disbursemts in procedents. Sale exceed the amount levied, & therefore Pltff entitled to it.

Bender for Oppte All costs to gr Pltffs are entitled have been deducted. —

Labroquerie
v
Lacoste —

On rule sued out by Guardens, on parties to shew Cause why the Sr. Gardens Shr. not be exonerated from their liability, upon giving up to the Sheriff the effects committed to their charge. —



Quesnel for Pltff — contends that the effects shd be ordered to be delivered up to the Pltff. & not to the Sheriff. —

Stuart for Defts. — The rule cannot be allowed, as the property must await —

Georges — contends that Gardiens are entitled to their discharge. —

Wednesday 15th June 1814. —

Joubert. —
v
Laing. —

On Defendts motion for a peremption for want of proceeding by Pltff. —

† See mo. on first April last. —

McKenzie.
v
McGillivray
& al' —

On mo. to set down cause for hearg. on 17th —
Cause set down for hearg Writs — on 13. on gr. day Defts produced an affidavit stating want of Writs — Contr — that affidt. was insuffr as not stating the facts which Writs are expected to prove

Daillebout
vs
Duchenois
vs
Coffin-Gar

Action of account.

Nothing said by Defd. — prays only that his right over agt. his Garant may be preserved. —

Beaubien for Gar. contends that Defd's action en garantie shd. be dismissed, as irregular, the Gar. not being bound to take the fait & cause of the Defend. as in case of a droit réel. —

Selby
vs
Mc Gillivray
&
Sutherland
Intervs

On exception to the Intervention of Maria Sutherland

Stuart for Defd. objects to legality of claim, the Intervs Party being a married woman. —

art. 224 Cout. 3 Vol. p. 182. —

Gale for Intervs Party. There is no community of interest between M. Sutherland & her husband, this being excluded by their Mar. Contract — & therefore Party entitled under the authority of her husband, without his presence to prosecute this demand. —

Roi
vs
Paré
&
Perrault
dal. Opst

On opposition afin d'annuller —

Stuart for Opt. boards & planks given in part of advances made by Plff to Defd —

Collusion between Plff & Defend —

Vigé for Pltff. contends that wood was never deliv^{d} by the Defend^{t} to the Opposants — under the written agreem^{t} —

Stuart in reply — The Opposts were in poss. before the making the agreement — see Depn. N^{os} 1. 3. 4. 5 —

Taylor. vs Drenan } action for rent of a farm & for cutting down wood —

Boston for Pltff moved previously that depn^{t} of one Somerville a Witness for Defd^{t} sh^{d} be rejected, as having been brt forward too late —

Stuart for Defts — admits that he cut down timber but under a permission from the Pltff by her agent Thos Taylor —

In ans^{r} to mo. files affidavit of Somerville to shew that he had been notified to attend previous to the 12th May. —

Bidequin vs Aubuchon } action ag^{t} Defd^{t} to render acct of the property belonging to the Pltff late husband. —

Bourré for Pltff. objects to the acct rendered, as not including a certain lot of land q^{d} belonged to d^{e} husband of Pltff. —

That the donation set up by Defts is invalid, the same not have been insinuated during the life time of the Donor. — Don. under reps de Pothier. p. 61

That the Donation was not regularly accepted by the Donée — not have been ratified by the Defts when he came of age — Ib.

There was no tradition made under the Donation — Ib. Vo Tradition. p 66 & 82. —

There a reserve of the property in the act, to the Donor by 9th it was stipulated that the Defts could not alienate wt out the consent of the Donor. R. & Prevot de la Jannes 2 Vol. p. 187. 3 Vol. Gr Court. 1220. — Delivery necessary in the life time of the Donor —

The birth of Children since the Donation, renders it null —

Ross for Dfts

The act of Donation was insinuated in 1798, as appears thereon. —

The Donation was accepted by the father of Defendts who was then a Minor — an acceptation was promised to be made when he shd come of age, & altho' this was not done, yet other act tantamount were done by the Defendts —

There was a tradition of the property, & a payt of rent by Defendts for Several years —

There

There is no such reserve in the deed q^h^ can be construed into the terms of, donner & retenir. —

There is no survenance d'Enfans between the Donor & the woman who were parties to the act, by q^h^ the act can be affected. —

Nigé in reply. The Defend. is too late to set up title to the land after the act ended —

That the Donation produced is no evidence, being a copy from the Registers of Insinuations, q^h^ makes only the copy of a copy. —

The maitrise of the property being in the donor, there could be no tradition to the Defend^r^ —

The survenance d'Enfans w^h^ the present Plff. would at all events set aside the act —

Cuvillier
Smith } action of assumpsit for goods sold —

Sullivan for Defr. set up Incidental demand —
for part of goods which were sent back for sale
to the Store of Plff. —

Schuyler vs Labadie & Legray

Bedard for Pltff. objects to the power of the Court to defer the Serment suppletoire, as there was an omission, & not that disette of proof under wh such serment can be tendered - 1 Pigeau 256. That the Sous Seing privé has no certain date until proved and that proof is not yet made. — That the oath of Legray cannot injure the right of the Pltff. —

Thursday 16th June 1814

St. 48 Geo. 3. ch. 22. — St. for appointg Commissr to take oath

Ex parte Jos: Smith

On application for Hab. Cor. —
Case King v Wake - 54 Geo. 3. ch. 3 - not in force. —
2. Geo. 2. stated not to apply. —

M'Pherson vs Murray -

Action for work & labor. —
Stuart for Dfdt moved that depn of Angus M'Pherson the pltffs brother be rejected from the record. —
Defendt contends that pltff has not proved the Case, but that proof of the Incidental demand is made out. The Contract, if any, between the parties, was a Special one —

and if pltff be entitles to any thing, it would amount to about £25 or £30 – as evidence of one Collins.–
The Incidental demand for £120. is proved. –

Ross for Pltff – as to the depos^{n} of Angus M^{c} Pherson, it is admissible, the agreem^{t} between the parties regarding a commercial matter, the collecting wood which had been wrecked on the way to markets. –

Lacroix. v. Rochon.

Action on promissy Note. –

Stuart for Deft^{r} – The Pltff ought to have exhibited the titles upon q^{h} he claims lods & Vents, for q^{h} the note in question was given, particularly when interest thereon – Contends that no interest sh^{d} be allowed as charg^{d} by Pltff. –

Surgeon. & Villiot v. Borie, Gart

Action for recovery of wheat –

Georgen for Deft^{r} The transport to Pltff not regularly made to Pltff – prays Judg^{t} over as Gart in case of Judg^{t} –

L.M. Vigé for Gart – The Transport was never notified to Villiot, the Garant in consequence of q^{h} he p^{d} the rente & accounted with Lepage fils. whose receipt he files – Dec^{r} 1811 –

altio. the rent was due only in Janv. 1812 –

—

Prudhomme
vs
Johnson –

action of Debt on deed of Sale –

Defr. has been heard on his Serment Supplétre

Me. Vigé for Plff – considers that the 2 receipts of £100 may be for done after same sum –

—

Turcot
vs
Milne

Action to execute deed of Sale –

Bender for Plff – Defr. undertook to give a title to the lands the Plff has put him en demeure by a protest – therefore entitled to his action. –

Open for Defr – Defr. always ready to pass a title –

—

Monetoux
vs
Magnan

On defendr mo. to quash writ from insufficient Service –

Proof adduced by parties –

Sullivan for Defr. says, that proof has been made to shew insufficiency of Service –

—

Friday 17th June. 1814.

McGillis. & Robillard. & Robillard. & Dumouchel Curr. & Gart

On Defts mo. to rescind a deed of Exchange made with the Gart of the land in question, in consequence of the degurpissement made by Defendt of the land affected by the mortgage. — & mo. for Experts to estimate damages — The Defendt a Curator. submitted point to the Court —

Bellefeuille & Bourg. —

Action for rent on lease of a Mill. —

Bedard for Dft. repairs made to the dam to greater amount than the sum due on lease —

Dansereau & Dansereau

Action of acct. of a Community between Dft & his late wife. —

Bedard for Plff. The Inventory produced by Dft was rejected from the record, the party entitled to an act. of the Continuation of the Commty, as if no such Inventory had been made. Poth. Proc. Civil. p. 335 — & 794 — No amount rend. & if it had without Inventory it wd be insufficient. Drouin v Meloche —

P 335
794

Poth. Personn. p. 622. 4to Domat. lw. 1. tit 1. Sec. 3. p. 180 No 41. — Rep. de Jurn. vo Compte. p. 321.

Beaubien for Dfdt. The Plff has admitted the Inventory by giving a receipt of his rights thereon – & the only objection now raised agt. it is the change of the date, upon wch it was rejected –

Perras. } Bouchard } Action for House-rent –
Noth.g said. –

Corse, Curr' } Scott. in } Action for value of articles furnish.d at Sale of late Mr. Charland –

Bender for Plff. Defend.t has pleaded compensation for certain articles furnish.d by him to the late Mr Charland, wch Plff contends cannot be admitted, as the Succession is insolvent – There is no suff.t proof of the debt –

Stuart for Dfdt. The compensation pleaded is regular even if suc.n be insolvent, his debt being priviledged one for bread furnished to him – but there is no proof of such insolvency –

Laporte... } Paradis... } Action of damages for unjustly with-holding the Plffs daughter –

Stuart

Stuart for Dfd^t – The Indt^s on writ of Hab. Corp. do not warrant any further proceeding than liberating the party – The Court has no authority to give costs on Hab. Cor. – That if Court had authority to give costs, this action for same costs becomes useless, as party wd^d be entitled to his execution – There is no proof of a demand for the delivery of the child on the behalf of the Plff

—

Libersan v Libersan } action for value of certain articles of rent & pension

Bedard for Dft – The plff claims that the whole rent sh^d be p^d at the same time, q^h is unjust, as a certain space of time is allowed for the payt of the articles – That all the articles are have been furnished to Plff No suffic^t proof that Plff stood in need of a servant girl –

Bender for Plff – contends that articles have not been furnish^d – particularly the wood, of q^h only Six cords have been furnish^d –

—

Park v Ames. } On Promy. Note. endorsed to Plff
Stuart for Plff – Only question is for costs – as to notice given to Dfd^t of Indorsement –

Quesnl. Bailey on bills. 2nd Edit. 108. p. 27. Dfend^t never had any notice

of the Indorsemt. of his note to the Pltff, but by the present action upon wh. he immediately ps. the money.—

Osborne
vs
Finan.

On defendt. mo. to quash writ from irregularity of service on Defd. Finan.—

Ross for Defts. An officer of the army does not acquire a domicile by momentary residence in any place, when follows that army— The return is denied— and the denial of an actual domicile is sufficient denial of the fact of last domicil.—

Seduc.
vs
Jammes

Action as Defendt. as Caution.—

Stuart for Pltff. Defts. has pleaded to the merits, and afterwards pleads the discussion, wh. is a dilatory plea, and ought to have been pleaded before a plea to the merits— Poth. Obl. No 410.— Plea of discussion only suspends proceedings, but does not annul them— Defts. has prayed that action shd be dismissed— which is inadmissible,— and as he has not asked that proceedings shd. be suspended— the Court cannot grant it, as they must proceed upon the petita of the parties.—

410

Beauvais for Defts— Defts. not bound to pay the Costs

on

on the original action — Defend. has also pleaded that a part. of £12. 10 had been made on acct. & therefore action ought to have been only for £12. instead of £34 — That admitting the Pltff. action for £12. 10. Defend. then pleads the discussion thereon, & prays that the proceedings be suspended & not dismissed, as stated by Pltff — That Defd. has upheld demanded that action against him sh. be dismissed as Pltff has accepted part. of her debt from the Original Debtor —

Stuart. pleads. to a part of the merits, is the same as pleading to the whole, because in so far the action is admitted to be well brot — where a dilatory exception supposes that somethg. sh. have been done by Pltff before bringg. the action — That there is nothg. in the conclusions of the plea qt. demands the suspension of the action —

Bergeron vs. Cadieux } action for Damages for has illegally sold the goods & chattels of the Pltff.

Vigé for Pt. The facts alleg. are not proved
Lacroix for Bergeron, pere — No proof made agt. Defendt
L. M. Vigé, for the Defend. Leblanc & same Defence —
Rots. in reply for Pltff.

Marbec. vs Meunier

Action of debt on Obligation

L. M. Vigé for Dft. pleads payt — refers to receipt Dated 2 Mars 1814 made after the obligation, being in full of "tous comptes" between the parties — also to payt. of 4 Dollars by Plff to Defdt. subng. thereto for articles furnished by Defdt — Then appear no other comptes or transactions between the parties but the Obligation in question —

Bender for Plff — The Receipt of 2. March 1814 is not suffe. being proved by only one Witso —

Saturday 18th June. 1814. —

Allan vs Peaslee

Sarrant

Granville & Desrue

Action dismissed — money pd by Desrue as agent for Menetrier, held suffe. altho' no other authy. appears in Desrue than that of Negotiorum gestor. —

King.

M'Cord

Conviction confirmed — It not appears by allegation or proof that Patevus had brot himself within the right to hold the privilege of holding a ferry, by having erected the bridge within the time limited by the Statute

Sarrault
v
England — action dismissed — The Court held Head Cliff could not take away the monies of the absentees, q^t had been vested on good real Security by avis de parens without shewing any cause or ground for taking the money —

Duclebout
v
Duchenois
&
Coffin Gar^t — Judg^t to amount —

Osborne
v
Finan — a day for proof [illegible] facts alledged in the motion —

Monday 20th June 1814.—

Taylor & Drenan — 4 — Interlocr naming Experts — this after proof made before the Court //

Leduc & Carriere — // — Costs allowed up to time of payt

Cuvillier & Smith & Contra — // — Judt Pltff to have costs on the third demand, as the same became unnecessary under the act & statement wh the Pltff had previously furnished to Dfts —

McPherson & Murray & Contra — 4 — Arbitrators to be named to settle matters in difference — this after proof made before the Court //

Harbec & Meunier — 4 — a Statement of accounts such as settled at time the receipt exhibites by Defts — to be given in to see whether the Obligs in question were included in it or not —

McGillis & Robillard & Dumouchel Garnt — // — The mo. for a rescision of the deed of Exchange — rejectd — as a thing the party ought to have demanded by his action en garantie it being a new pretention wh the Court could not grant in the Summary manner by motion — The 2d part of mo. granted —

Marandeau & Cousineau — 4 — accte ordered — It appears that the pltff late husband consented to her living separate from him, and never have required her to return to live wt him — this case diffte from that, Arget de Malo v. Petit. Oct. 1806. —

argued 4th. april last—

Kemp. v. Manson. & Martin. } W Action dismiss^d. The Court consid^s. that the Constable, or Officer executg. a warrant from a Justice, is protected under St. 24 Geo. 2^d. ch. 44. even where the Justice has exceeded his authority in the matter respects wh. the warr^t was given.— Sed. vid. Dict. W. J. Bayley. Burdett. v. Abbot- 14 E. Rep. 160.—

Selby. — v. McGillivray & Sutherland Intervs } W Exception dismissed.—

Monet. — v. Magnan. } Action dismiss^d. for want of suff^t. delay of service of Summ^s.—

Leduc. — v. Dufour. — } Judg^t— consid^s. that was fraud in the Def^t in conceals the faults he knew the horse had.—

McKenzie v. McGillivray } A day given to ex. Wit^s. of Def^t. who could have been ex amn^d. on the last witness-day—

Burton v. Manning } Interlocy. that on default of the Crown proceeding in a certain delay, the Cause be finally heard.—

Perras dal.
vs
Taylor. — 4

Ordered that one of Plffs not called into Cause, be made a party before proceeds. —

Tysson.
vs
Villiot. —
&
Bouc. Gar. 4

Judt. . . . . .

Logan.
vs
Taylor. —
&
Seminary &
Stuart. Opp.ts 4

Parties allowed to plead over — on oppn of Seminary —

Lehenp.
vs
Labadie
&
Leguay Gar. 4

Action dismissed —

Labrecquerie
vs
Lacoste — 4

Judt on award — & ~~no~~. on motion of Gadeau

Laombe
vs
Cuvillier 4

exceptions dismissed —

see case. Egerton. vs. Mathews. 6. East. 307.
† Champion v. Plumer. 1. New R. 252
Allen vs Bennet. 3 Taunton. 169.
Sugdens Law of Vendor. 64. —

Beaupard
vs
Boivin
Dal. — 4

Judt —

Corse. in
vs
Charland

Judt. for demand — Court considering the compensation pleaded by the Defend. not admissible —

Boivin.
vs
Robillard.
&
Boivin. Gart.

Judt. for Pltff — proof not made out by Defr. on his pretention of Garant —

October Term 1814.

Saturday 1st Octr 1814.

Veuve Valois
Seduc — } On Defts mo. to reject Mr Siné as a Surveyor for not having complied wt the Interlocr rendered in this Cause —

Mr Bedard for Defts demands that Court fix a day for the parties to proceed without any notice on either side

Ex parte
Augr Lavoie } On mo. for a Certiorari, to remove a Conviction and proceedings had before Magistrates at Lassomption under Ordr 27 Geo. 3 ch. 2.

Mr Leod.
Mr Intosh — } Cause was set down for ex. of Wits in Vac. — the Defts did not attend on 21st Sept. last — when an entry was made in the Role d'enquête. "Contr. generally by consent of Pltff — "Deputs. did not appear." The Defts now moved that Cause shd be set down for hearing — Objected that a new day for evidence shd be given — & q. opinion was the Court & rejected motion.

Perrault et al'
vr
Ermatinger } On Defts mo. to delay to call in his garant —

Objected by Pltff that no day ought to be granted as there is no room for any demande en garantie.

Champan. } On evocation from Inferior Court
Lefevre dal }
Niqé for Pltff objects to Defts right of evocation —
Rolland for Dft contends that he is entitled to contest the title under q^h the servitude is set up. —

Ex parté } On mo. for a Certiorari —
Thr. Stibbens }

Murray } On defend^s mo. for a day in Vac —
Kiper — } over to Monday

Jackson. } On mo. for evidence —
Robertson } Defts object that a Com. Rog has issued retble
1st next Febry —
Bourdon for Pltff cites cases of Campbell vs. Baker — in q^h
delay till return of Com. Rog. for proceds. wt evidence
was refused —

Bricault. } On mo. for evidence. on q^h —
Bricault. } Bedard for Interv^s party — there shd be a prior hearg
& Massy Int^s } on law — a rejoinder. —

Monday 3. October 1814

Vve Valois vs Leduc — a day fixed for making Survey by the Surveyors —

Ex parte. Aug.n Lacroix vs — Motion granted. —

Ex parte Thos Stobbins vs — Do — do —

Perrault & ab' Ermatinger vs — a day given till 8th. to defend. to call in his garant

Champau. Lefevre & al vs — Parties allowed to proceed on the evocation at their risk

Jackson. Robertson vs — 4 Defend.r mo. granted to ex. his witness, but with a benefit to the Pltff to ex. his witn.s after return of Com. Rog.rs —

Bricault Bricault & Massy & Intis vs — a day granted for hearing on law to morrow —

M^c Leod. }
M^c Intosh. } On defend^s mo. to fix cause for evidence in Term
Pltff. objected — That cause ought to stand for Vacation —

Ritchie }
Dunlops. } On Pltff. mo. to ex. Dft. on fair sett.
Ross for Dft. objected, that cause is to be tried by Jury
and a Venire has issued to summon the Jury — & therefore
Pltff is too late. Reg. Prac. Su. 29. — Pltff ought to shew
special circumstances to entitle him to his mo. —
Ogden for Pltff, Venire issued 1st. 3^d June last — but no
trial —
over. —

Trichelte dal }
Monjeon — } on trial by Sps. Jury, action on Sps. assumpsit
Verdict for the Defendant.

Grant }
M^c Intosh } on mo. for delay to file Exhibits. — Granted.

Tuesday 4th October 1814.

Reg. Gen. The Judges agreed that it should in future be observed as a rule in regard of Causes in wh the evidence has not been completed in vacation — that at the completing the testimony shall not be had in Term time unless by consent of the parties, & then every such cause shall be put down on the Role d'enquête after the other Causes of the day — but when such consent is not given, then the Cause must go over to the next Vacation. —

Mc Leod. v Mc Intosh } Mo. granted for the first Wit day in Vacation upon the above principle. —

Smith Wadsworth } On defts mo. to quash writ of process, Defendt living at distance of more than 30 leagues from Court House, and no Special order of one of the Judges made for regulating the service of the process Stuart for Pltff — delay given more than requisite having been made two months prior to the return —

Trichette. v Brisbain.

On defendants motion for a continuance of the enquête on the 14th. inst. as the Witt. subpon.o to attend in Vacation did not appear - there also an affidavit stating reasons why one Boyd a master Carpenter in the Kings Service, and one Potts could not attend in Vacation -

Stuart for Plff. - There cannot be a partial examn. of Witt. unless done by consent, or a reserve made before the evidence entered upon - Reg. Prac. sec. 27. art. 14.

Sol. Genl. for Defts. refers to 21. art. as general, & applies to case when a part of the Witnesses cannot be examined leave may be obt. from the Court to examine such at a future day upon good cause shewn - and further that parties had proceeded on the enquête last Vacation by consent

Murray v Kuper.

On mo. by defts. for ex. of certain Witt. -

Gale for Dfts. Witt. could not attend on 21. Inst. as appears by his affidavit, being absent on public Service at that time and before the enquête was entered upon on the 21st. Inst. the Defts. objected to the enquête being so entered upon -

Stuart for Plff. - Nothing shewn by Defts. that diligence had been done in subponeing his witnesses, & therefore not entitled to indulgence -

Murray
vs
Ducloss.

On defend^{s} mo. for prolongation of the enquete in order to ex. his Wit^{s} — In Sep. 1813. by a consent between the parties, several Wit^{s} were ex^{d} — noths. after^{d} done till 21 Sep. last when cause being set down, Pltff declared he had no further evidence reserving only the right to ex. Def^{t} in fact, and Def^{t} then declared ~~going to~~ entering on the ex. of his witnesses evidence as they did not all attend, & demanded that another day sh^{d} be granted to him ~~to ex. his Wit^{s}~~ for this purpose upon good cause shewn — affidavits & return of bailiff shew diligence done to get the Wit^{s} for 21 Sep. but they were then absent upon the Province —

Stuart for Pltff. Def^{t} permitted Pltff to ex. all his Wit^{s} before making any objections — he was then too late — The order of Sum^{s} was made on 21 Sep. the very day on w^{h} the Enquete was to be had — there is also a Service of Sub. on Colebatte at St Johns on 20th Sept^{r} at St Johns — w^{h} was too late for a Wit^{s} to appear on 21 Sept^{r} — Service on Rice appears sufficient & therefore the only Wit^{s} that Def^{t} would be entitled to ex. had he not admitted Pltff to enter upon the examination of his Wit^{s} before making his objection —

Grant
vs
Mc Intosh

on defend^{s} mo. to quash writ of Capias.

Ross for Def^{t} — The Pltff and Def^{t} both live in Upper Canada, and the Defend^{t} by returning from Montreal

to

to ~~retain~~ his domicile, is not such a leaving of the Province, upon qr. a Capias can be granted — That the Pltff must also swear that by such leaving of the Province he will be deprived of his remedy ag.st the Defdt. wh. cannot be, as the law has provided a remedy in the Province where the parties live — The affidavit is insufficient, as it refers to a Statement of account & is not positive. 2 T. R. 55. — 1. H. B. p. 10. —

+ Defdt. is personally indebted, and that

Stuart for Pltff. It has been decided that any person leaves the Province, wherever his residence may be, is liable to be arrested — the fact of residence of the parties not proved. — The affidavit is sufficient — it is allowed by law to be made by an attorney, & therefore can be done only from what the Party Pltff tells him — the authorities from English law do not apply, where the principal makes the affidavit. — The attorney in this case first states in the affidavit the Statement of the accounts of the parties, & then goes on to add, that he believes the Defdt. to be indebted to the Pltff in the sum demanded —

—

Truchon, Vve Scott. v. Lemai — }

On Pltff's mo. that Dft. shew cause why enquête sh.d not be had ex parte.

L. M. Nigé for Defdt. says the parties have settled their

their differences by an acte of Compromis subsequent to the institution of the action —

The party admitted to plead the matter by Exception peremptre.

Naulette vs Brand — Case goes over as irregular set-down for exp. of Witss —

Demers vs Demers & Bourassa — On rule to shew cause why a capias shd. not be granted as Bourassa —

Smith vs Wardal — On rule, why certain parts of Excep. dec. shd. not be taken from the record, — the same regarding merely the service of process — & awards to rule of Prac. is irregular —

Rolland — The plea does not regard the regularity of the service of Process, but is to the Jurisdiction of the Court

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Surprenant vs Bricault — On mo. to reject an excepte. filed by Defdt. as being merely to the regularity of the writ —

Stuart — Matters regarding the regularity of the action, such as that of mis-nomer, may be set forth by plea —

Harbec
vs
Meunier.

On hearing on accounts filed by the parties under the Interlocutory of the Court of 20 June last—

Bender for Plff. has filed such statement as will shew his present demand to be unsatisfied—

L. M. Vigeu for Defd. the papers filed by Plff refer to Judgt and execution thereon, upon qch he admits the receipt in question was founded - but as that receipt does not mention in it either Judgt. a Exon, it may as well refer to the Obligns in question, qch can as well be comprehended under the words, "tous comptes," as a Judgt. or Exon—

Wednesday 5th October 1814 —

Smith vs Wardal } Mo. rejected - matter being to the Jurisdiction

Surprenant vs Bricault } Mo. rejected — on same principle

Murray vs Kipser — } Defendant's motion granted, the Court considering that sufficient diligence had been done by him to procure his wit.s —

Trichette vs Brisbain. } The Court considering that the parties had proceeded to the examination of wit.s without any order, that the Pliff was not entitled to take the strict rule of practice agt. Defend.t as if they had proceeded under an order of Court, and thereon a day was given to the parties to proceed on the enquête as they shall be advised —

Murray vs Duclos } Mo. granted — Court considers the proceedings had by consent between the parties as not giving a right to enforce the strictness of the rule, & that Defd.t had done suff.t diligence as to some of wit.s —

Smith vs Walsworth et al — } The parties to proceed to establish the fact — the Court being of opinion to adhere to the rules of practice in this respect — The distance being admitted, the Court ~~dismissed the~~ quashed the writ. —

Hillyard v. Winchester } On defd. mo. to stop proceedings until costs in a former (Sarah Cummings) suit be paid —

Sol. Genl. for Plff — parties not the same —

Gauthier. v. Rocbrune } On mo. for Judgt. ex Tiers Saisi.

Rocbrune T. S.

Ritchie. v. Dunlop } On mo. to examine Defend. on faits & articles on special grounds stated —

Ross. for Dft. contends that the grounds stated are not sufficient to entitle Plff to his motion. —

Perrault & al. v. Davaine } Bedard for Dft. moves for hom. of report of Practiciens

Beaubien for Plffs. objects to the report —

1. Plffs. never consented to the nomination of the arbitres.
2. Facts ascertained by arbitres ought to have been stated by writ —
3. No rent all'd. to plffs. for their half of the house enjoyed by the Dfts. after the death of her husband. —

Domain. No 237. as to repairs — 9th has been allowed to Defds. out of the rent, altho' she was bound to make them herself as Domainier

4. The intimation of the emplacement made in 1811, instead of being made at the time of the decease of the husband —

The Practicians allow not merely the Interest of the money, but also the enjoyment of the whole of the house — This they give as a compensation for the Interest of the dower, q.t they could not give, as the rent of the house exceeds that Interest — The Defr ought to account for any augmentations on the estate the holds in lieu of Dower. Poth. Douaire. Nr 178 —

D. art. no. 178

Bedard for Defr — The witnesses called by the parties were by their consent made arbitre to report upon the value of the property this consent is not specially made by the parties, but the Practicians had power to receive such consent & to act thereon —

It is only to ascertain the right of the Pliff that the Practicians estimate the rent of the house — the half the nett rent is all the Pliff is entitled to —

Alexandre & Douglass } Action Petitoire. — over for proof. —

Taylor & Drenan } On report of arbitrators. — & —

Boston for Pliff. contends that the allowance made to Defendt cannot be deducted from rent as there is no Incidental demand made by him — The arbitrs have not confined themselves to the rule of preference, but allowed more to Defr. sums q.t accrue prior to the lease —

The debt set up by the Defend. was due to him by Plff. brother — not by Plff. —

Stuart for Defd. contends in favor of the report — awards to pff. a balance of £17. 17. —

Boston. replies that Defd. has admitted pltff. demand by his plea

47.3
47. 3
17. 17.

Dunlop. }
" }
Roi. — }

On Report of arbitrators —

Ross for Plff. prays hom. of report of two arbitrs

Papineau for Dfdt. prays hom. of the report of Mr Baron, their arbitr. — because he states grounds of his opinion, which are right and well founded, whereas report of Mr Girard and Mr Gunnerman contains no grounds of their opinion, and ought not to avail agt. the affirmative volume of the report of Mr Baron. —

Thursday 6th October 1814.

Demers vs Demers & Bourassa mis en Cause

Rule absolute aft. bailiff.—

Hillyard vs Winchester & Cummings

Proceedings suspended until the Costs of a former suit oblt. be paid—

Ritchie vs Dunlop

Mo. granted— The Ct. seemed to think also that if the first Venire had failed, that the Deft would have been entitled to the oath of the adversary before suing out a subsequent Venire.—

Grant & McIntosh

Rule ~~for~~ discharged—

Allen vs Peaslée & Oppos.t

Sol. Genl— for Oppts. refers to sec. 37. art. 8. by which it is settled that if no objection be raised to the opposition in ten days after it is filed it shall be considered as admitted and therefore he was not bound to file any reasons of Oppn not having given any notice to this effect until more than one year after the Opposn was filed.—

Stuart for Pltff. contends that rule of practice does not apply.—

Charet. }
v }
Gamelin } On Pltff's mo. that Dfdt. conclude to the Country/ regularly.—

Rolland for Dft. pleaded not guilty, & then adds a justifn of Pltff having used words of provocation, and then concludes the whole to the Jury—

Friday 7th October 1814.—

Witness-day— No Causes heard.—

Saturday. 8th Oct. 1814.—

Witness-day

Monday 10th October.—

Charet }
v }
Gamelin } The Court granted the pltff's motion, considers that regularly the plea of general issue should take conclusions to the Country.—

Jackson et al'
v }
Robertson } On Pltff's mo. to set down cause for addition of evidence—

Boston for Dft. objects, that he had moved for evidence in this cause on the 1st inst. when it was agreed to hear

as a Com. Rog. had issued to England returnable on the 1st of next Febry. Term

Arnoldi
vs
Ant. Perrault
&
Augs. Perrault

Action ag. Defr. for a doctors bill —

Bourret for Pltff prays Judt. on evidence adduced.

L.M. Vigé for August. Perrault fils — no proof of the quantity of medicines, or number of visits made & furnished — at most the quantum allowed to a Doctor for his visits ought to be limited to the sum allowed by the Coutume de Paris, as settled in the Court of Appeals in the case of one Blanchette vs —

The Defr. gained wages &c. were rec. by his father, the Defr. being then a minor and living in his father's house —

Beauvais for Defr. Ant. Perrault — pleads — non-assumpsit & Prescription — Contends that he never employed the Pltff, that Pltff never brot. any medicines, nor &c. any visits at his house —

Bourret for Pltff offers to evidence as suffr. ag. both Defrs that has proved the acknowledgt. of Augs. Perrault, the Defr. Ant. Perrault ought not to be allowed to avail himself of the plea of prescription

Bricault
vs
Bricault.

Over till to morrow —

Tuesday. 11th. October 1814. —

Jackson dal
v
Robertson

Pltffs mo. granted, but reserves to Dfdt. his right to ex. his wit. after return of Com. Rog. — on same principle that Defendts mo. was granted on the 3d. instt. —

Bissonet
St. Michel
&
Degen, Curl.
&
St. Michel oppt

On opposn of St. Michel who had dejected the land in consequence whereof the land was sold upon Degen, Curator, founded upon the refusal of the Sheriff to receive his enchere at the sale & adjudication of the land. to the said St. Michel opposing that the Sheriff give a title to the person to whom the land was adjudged in consequence of the Sheriff's refusal as aforesaid, contending that he was entitled to bid for and to purchase the land, he not-being the debtor of the plaintiff. —

The Sheriff observed that by the writ of Exon sued out in the Cause, it appeared that the defendt was the personal debtor of the Pltff, & therefore he could not receive his enchere.

Bricault
v
Bricault

action by the Son of the father to render an acct. of the Community between him & Pltffs mother —
On objections to acct rendered under the Interlocy Judgt of the Court —

Bedard for Pltff, demands hom. of Report of Bondages & Declaration

1. By first act. No act. of the fruits & revenues of the estates of the s^d Comty

2. That a mistake has been made by Defts. in suppos^g. that there was a Continuation de Com^te. —

Stuart for Dfdt. — Mr Papineau, the ~~practicien~~ notary ~~also~~ drew up the first ~~first appointed~~ account ~~made a right report~~ — his act. was of a continued Community, whereas it ought to have been of a Comty. but not of the Continuance of it. — The Pltff did not object to this act. & move to get it rejected but applied for Practiciens to settle the pltffs. rights therein, & claims the fruits & revenus between 1793, when the Pltffs mother died, & 1797 when the acct. was rendered, whereas by his declaration no Continuation de Communauté — The Court cannot grant this Continued Community, as it has not been asked for, it would be an ultra petita, & altho' by mistake has been accounted for by Defdt —

1. The Practiciens have set aside the act. rendered by the Defdt — and have proceeded without any account before them, but have drawn up an account for the Defdt — whereas they ought to have submitted the sufficiency of the account to the Court before proceeding —

2. The Practiciens have made a gratuitous supposition that the state of the Comty was the same in 1793 as it was stated by the Defdts act., in 1797. — No proof made of the state of the Comty. in 1793. nor any asked for —

3. No proof made, either by Experts or wits as to the value of the fruits & revenus

4. Same want of proof as to améliorations. although estimated by the Practiciens to the amount of several thous. livres. —

Lebrun Comte p. 425. 2 sub. Renusson. 315. 2 sub.

5. It is not the money laid out by the Comty, but the improved state of the propre at the dissolution of the Comté that the Credit due to the Comté is to be estimated —

Rep. vo Recompense Poth. Comté No 634

6. The improvements here are of a nature to give the whole benefit to the Comty — as the "clears of Land" par 4 — a sum of upwards 5000# is charged to the Defde — It is not a permanent Improvement — therefore nothing due to the Comty Renusson. p. 314. Lebrun. p. 405. —

7. The Partage made by Defr. wt his Children in 1806 has made an allowance to Plff in common wt his other Children an indemnity for the above améliorations —

1. Pigeau 40.

8. Nothing beyond the Crüe on the estimation can be allowed instead of — qn the Practiciens have allowed qt they call plus value — or a higher estimation of such effects —

9. The grain charged in 1793 and also in 1797 — Object to the sufficiency of evidence from Cartier's books of acct

10. No recompense due to the Comty for the rente & pension viagere pr. for a land acq. by the Defde before his marriage, as the revenues arising from that land are in law considered suffte to pay such rente & pension viagere. — This is a moveable debt to qn the Comté is liable —

Rep. de Jur. vo Recompense Poth. Com. No 626. 3e Examp. No 627. Renusson — de Lebrun p. 410

= Cls. de Dépenses Répresis —

1. The Defde entitled to take his part of the Comty with his former wife, as the second wife, the Plffs mother, not being entitled to more than a part d'enfant moins prenant, aux termes de l'Edit de Secondes noces. This has not been allowed to Defr by the Practiciens —

2. The sum of 162^{fr}. for the expenses of liquidating the first Comty. ought to be allowed —

Succ. of Plff Grandmother. —

1. The Compound Interest on 360^{fr}. for Plff's share in the house sold is irregular — Sum too small to compel Tutor to make an emploi of — for his minor — 2^{e}. Pigeau. 42

Bedard for Plff. —

1. The acct rendu ought to have gone to 1793 the time of decease of Defd's wife, but Plff. by their debats have stated the acct. as it ought to have been rendered — No new acct. can now be rendered by Defd — because that account and the debats thereon were by the Interlocr. of the 20 June 1812 submitted to the consideration of practiciens, sic of. Ludt the Defd. has concurred by naming practiciens & appears before them to support his acct. —

2. The Plff was a minor at the death of his mother and entitled to shew that the moveable property of the Comty. was undervalued — Contents himself wth. the Creic & agrees to take away the plus value given by the Practiciens

3 Defd. ought to have shewn that the state of the Comty was different in 1793 from that stated by the Inventory in 1797. — The Commune Renommée is suff^{t}. to settle the value of the Comty —

4 Recompense due to the Comty for making & clearg. land. Comté N^{o}. 273

5. As to the estimation of the revenues of the Estate, the practiciens have proceeded regularly & have taken the best proof to be found to establish the same —

6. Recompense due for the Rente Foncière p^{r}. by the Comty on the land purchased à la charge de la rente — this is not a debt of the Comty Defd. has cited N^{o}. 626. & 627,

Comté N^{o}. 239.

On reprises —

1. The reprises claimed by Defd. ought to be rejected for the reasons stated by the Practicens — The Pltff. mother rec.d no advantage by her mar.e w.th Defd.r on the Contrary the Defd.r received as proprs cattle to a greater amount than the sum to q.h he was entitled

=

as to the Interest on the 360.th the Pltff is entitled to it, and to the Interest upon that Interest — Denizart. vo Tutelle. 66. 67. 18. in France a sum of 400.th formed a suff.t Capital to be laid out at Interest by a Tutor — and in this Country where by law a discretionary power is vested in the Judge to say what shall constitute a suff.t capital, that 300.th is a suff.t Capital, when the fortunes of Individuals cannot be suppos.d to be so great

—

Mumo. Porteous. and Contra. } On accounts rendered of a Partnership between the parties. —

Beaubien for Pltff prays hom. of the report of the Auditors with the augmentations stated by Mr. Cuvillier in his opinion. —

Ross for Porteous. The ~~account~~ Report of the auditors not conclusive — The separate opinion of Cuvillier cannot be taken on the points in difference — proposes the nomination of new auditors to settle the matters not determined. —

Stewart for Pltff - The Report is conclusive as far as the parties join, and in the points in q^s the auditors differ Mr Cuvillier has given his particular opinion, this is regular and had Mr Garden given his opinion upon the disputed points the Court w^d have been enabled to give their opinion — the Report ought to be confirmed as far as it goes, and the opinion of Cuvillier on the disputed points taken up by the Court —

over.

Perrault
vs
Ermatinger
&
Roi —

On defend^s mo. for delay to plead till garant shall have filed his plea. —

Boiere
vs
Villiot
&
Villiot
vs
Bouc

On Pltff^s mo. to reject pleading filed by Garant as being an exception in nature of a demurrer without assigning any causes, as required by the rules of practice — See. 11.

The objections made by D^ds are to an Inscription de faux made by Pltff, and all that Defd^s ought to state is that the moyens are insufficient and inadmissible

Wednesday 12th. October 1814.

Briere. v. Villiot. and Villiot v. Bonc.

The plea filed by the Defendt. in garantie to the moyens d'opposition, rejected, being of opinion that there ought to be no written pleading to any moyens de faux, but this Indt. was formed not for the reasons stated in the Plaintiffs motion — This opinion to serve as a rule of practice in future.

Bourgeois v Brazeau

On motion for evocation. —

Beaubien for Pltff. objects to the admissibility of the evocation —

L. M. Viger for Dft. contends that the action confers regards future right personal debt, and therefore the evocation right —

Osborne v Finan. & al' —

On Pltff's mo. for proceeding ex parte agt. one Aherne, who has made no plea in the Cause the other defendts have pleaded exceptions to the action. —

Ross for other Defts state, that there ought to be no separate proceedings as Aherne. —

Denommé & al.
vs
Laurenger et al.

On mo. for evocation —

Vigneau for Defts. in support of the Evocation, contends that the demand is in the nature of an action confessoire & imposes a servitude on the land of Defts —

Ross in reply, there is no room for any evocation, as the rights of the parties have been settled by a Judgt. in the Inferior Court. — An evocation has been had on the original rights of the parties in this Court, & an appeal had from that Judgt. by a certain number (36) of the persons bound by that Judgt. the Judgt. was reversed in Appeal, as to those 36 — but as to the Defts who was not appealed the Judgt. of this Court must be final as to him. —

Lacombe
vs
Cuvillier & al.

On defend.rs mo. to discharge rule for enquête on the 14th inst. — from absence of a Witness. —

Ross for Plff. — objects — no affidavit of fact. —

Court. over to produce affidavit

Lacasse
&
Busby
Curr. &
Lacasse opp.

Action of account, to ascertain rights of Pltff in the Estate of the late A. Winkleloss.—
On Issue raised on the opposition filed by Pltff claiming balance due to her on her Indt.—

Ross for Woolman, Exr. alledges that the pltffs claim has been satisfied, and files a Statement to shew it—except a balance of £54.—

—

Munro
&
Porteous.
&
E. Contra.

Mr Gardner, one of the auditors appd in Court and stated that he could not form any opinion on the matters in qn he differed in opinion with Mr Cuvillier the other Auditor without hearing witss to which Mr Cuvillier objected, and that his intended departure from this province will prevent his proceeding to take such evidence so as to enable him to make up his opinion.—

Stuart for the Pltff, contends that the Court ought to take up the opinion alone, upon the above points and adjudge thereon, or a day given in Court for the parties to adduce their evidence on the matters still in difference under the report—

Bricault
v
Bricault
& Macé Intervt

On action to rescind a deed of donation made by Pltff to Defendt — and on the Intervention of Macé the defendant's wife.

Bedard for the Intervg party, states, that she has obtd a separation de biens, and as the property now in question is the only estate possessed by the Defdt she is interested to prevent the Pltff obtaing a Judt for following grounds —

1. That she is the Creditor of the Defendt, has acquired a mortgage ~~1. The stipulation in the donation is made in law~~ on his estate, & therefore she has interest to preserve — Pothr. Proc. p. 40.

Stuart for Pltff. Such an Intervention as here made could be supported only on the ground of collusion between the Pltff & Defendt — and this is not alledged in the Intervention. —

—

Bourassa
v
Derrau

action to oblige Defdt to execute deed of sale of a lot of land sold by him to Pltff. —

Rolland for Defdt — Contends, that on a verbal convention of sale or agreement of sale there can be no such action as present — 1 Henry. 452. promise to sell, does not give an action for a specific performance — In this case of verbal convention Earnest is the only damage the party is entitled to

1 Bouj: p. 449. ch. 1. – there can be no specific perform^{ce} on an agreement to sell without a title entered into by the parties –

Inst. liv. 3. tit. 23. p. 59 Sale without title is not perfect, so as to produce any right. ~~to the~~

Pigeau. shews danger of taking the adversary's oath in such cases –

Denizt. v^{o} Promesse de Vendre – act should be double to be valid

Pothier. Vente. 480. Party ought to have been put en Demeure.

Stuart for Plff. Exception prematur – the nature of the proof to be adduced is not ascertained, as it may consist of a title – then only will the ex cep^{n} apply –

But verbal conventions are valid – every sale comprehends three things – consent – price – & a thing sold

While the thing sold remains in the poss. of the Seller, he is bound to a specific perform^{ce} Poth. Cont. Vente. N^{os} ~~52~~. ~~58~~ & 68.

Refers to the Cases of the Township Lands adjudged here and in appeal –

Poth. V. N^{o} 479. on a promesse de Vendre, the party is entitled to this action – here Plff's action is founded on a Sale completed.

Rolland in reply – The Plff ought to have stated a title in his declaration to entitle him to support the action. –

Poth. is at variance with all other authors on the subject of

of a promesse de Vendre - this opinion ought not to prevail

Thursday 13th October 1814

Osborne ~ Finan — Motion granted —

Denommé & al. vs Laurencier — Evocation rejected —

Bourgeois ~ Brazeau — same Judgt.

Bissonet & St. Michel & Degen. Cur & St. Michel. Oppt — Execution set aside as irregularly sued out, and held that the Defr. St. Michel by abandoning the land he held mortgaged to the right of the Plff, was free to become the purchaser of the land at the Sheriffs Sale — Plff to pay Costs for having irregularly sued out the said Writ. —

Wilson ~ Manson — On action of assumpt. on a Promissy Note — Bolton for Defr. action premature — Tender of debt no demand made — Plff ought to pay Costs — cits 1 Doug. Rep. Ward. v Honeymoon —

Proc. Civil. p. 87. — Grant for Plff — Defr. ought to have pleaded an Exceps. dilatoire — Defr. was about to leave Province — same as Deconfiture. Obl. № 232.

Raymond vs Canvass } action of Trespass.—

Sol. Genl. Pltff: land formerly suppos: to have been within the limits of the Seignory of Lasalles — Pltff has enjoyed his estate for upwards 19 years under a Concession from the Seigr. of Lasalles — Contends that his poss. has been made out in proof.— Moves that the Deposition of one Nathl Douglass shd. be rejected as an interested Witness.—

Stuart. for Dft. The Pltff has not proved his poss. for a year & day next before the trouble complained of — The action being an action de Complainte. this is necessary — The proof of possess: is on the side of the defendant —

Sol. Genl. The Defends acted under the authority of Douglass who thereby is interested & cannot be a Witn.—

Friday 14th. October 1814.—

Witness-day.—

Saturday 15th October 1814.—

Lacorture
vs
Dubois—

On Pltff's motion to reject Defdr's plea of exceptn for want of deposit of two guineas.—

Lacroix for Dfdt says, that Prothy. is presumed to have recd. the money, by filing plea, therefore this motion irregular—so adjudged in several cases—

Hogan
Lindsay
1812
Grant
Rollet

Sullivan for Pltff, contends that rule of Prac. ought to be complied and refers to cases where it has been settled, that pleas of this kind even after have been filed by the Prothy.—.

Monday 17th October 1814

Green—
vs
Michaels

Mo. granted—

Bourasse
vs
Denau.

The Court were of opinion that the action was maintainable without a written contract, and that Pltff ought not to be excluded from his proof of his demand.

Lacorture
vs
Dubois

Pltffs mo. granted.

Wilson—
vs
Manson—

action in so far as founded on the Promissory note dismissed as premature—leaving parties to proceed upon the other Counts in the declaration.

Bricault
vs
Bricault
& Mace, Intervs

The Intervention admitted. — — —

Bergeron ats
Cadieux

Interlocutor. — — —

Mower.
vs
Powell

On trial by Sp. Jury, on action of False Imprist —

Objected to the sufficiency of the notice, the bailiff's Certificate not being sufficient

To examine how far the power of the Hussier extends in the Judicial Service

Stuart. Bailiff is a public officer, makes Sommations & other acts every day to wh faith is given by the Court — That St. of 24. Geo. 2. ch. 44. not in force in this Country —

The Court held that the St. was in force in this Country and the bailiffs certificate of the service of the notice as insuffte —

The Plff then contendes that he was entitled to prosecute his action wt out the notice, as the Defdt was not prosecuted in his capacity of Justice of Peace, but as a wrong doer — The Court considers that by the proceedings the Defdt was not sued as a Justice, permitted the Cause to proceed, but intimated that if it shd appear in the course of the trial that the Defdt acted as a Justice of the Peace, the trial wd stop & a verdict taken for Defdt. —

Verdict for Defdt

Harm. Rentes

Dorion Pltf
vs
J. M. Mondelet Deft

Has Rule to shew Cause why the Certiorari in this Cause should not be quashed for want of diligence done by him on it. —

Rolland for Deft. Ordr for Certiorari granted 13 June last, since which time no diligence has been done —

O'Sullivan for Prosecutr. states that he has done diligence by issuing out Stews writ — but no return has been made by the magistrates owing to the loss of the papers. —

Tuesday 18th October 1814. —

Frichette
vs
Brisbain

On defrs mo. for a continuance of the enquête —
Stuart for Defr. — No service of process upon two of the witss — Saml Potts another wn refuses to attend after a delay has been granted & the Cause put off to procure his attendce — It does not appear that any tender of money was made to him —
Sol. Genl — The Cause has not been twice fixed for the adduction of evidence

Bricault
vs
Bricault
& Mare Intervs

On Rule by Intervs party to shew Cause why he shd. not be permitted to file a certain act. between the parties —

Proteau aux
v
Larocque

On Rule to shew Cause why the Report made by the Practiciens should not be sent back to them to be amended —

Bedard — The Prac. have not complied wt the Interlocr but have made an estimation of the Rents années communes, instead of the estimation at the time of making the act of Donation — 2° The Impenses wrong charged — That Prac. ought also to report whether produce of the land was not suffic.t to have supported the Donors — if they lived with the Defendt — Also to ex. parties on oath —

Papineau for Dfts The Prac. have estimated the revenues of the land on the same principle with the charges on it, that is années communes — if the principle be changed as to one case it must be changed as to the other —
There is nothing in the Rule of Ref. demands of the Prac. to report upon the impenses & ameliorations of the land — Defendt ought not to be accountable for what may have been saved of the rents if the Donors lived at the last a/en of Defts — The Pltffs demand to ex. parties upon oath, who are not in the Cause — this is irregular —

Bedard for Pltff — It as the Prac. complies wt the three first points in the Interlocr. he wd not have demanded any thing further —

Munro
v
Porteous
&
Contra

Interlocutor ordering new Auditors — wt power to hear wits — To this the pltff objected — That Auditors cannot by law be authorised to ex. Wits —

Leger. —
v.
Langellier
&
Richardson
Oppt.

On Rule to shew Cause why land adjudged to Pltff shd not be sold at his folle enchere, he not havg. deposited the amount of the adjudication in the hands of the Sheriff

L. McNigé for Pltff, contends, that service of rule should be made on the party without which the same cannot be granted —

Ogden for Oppt. suing out Rule — cits case of Mabbut. vs Mousseau & Cuthbert Oppt, same point determined

—

Osborne.
v.
Firan.

On Pltff mo. to be permitted to file certain letters patent, made since the institution of the action. —

Ross for Defd. The Pltff action cannot be supported without shewing that he was entitled to give defendt a sufficient title to the land — The defendt has pleaded & shewn this insufficiency and Pltff finds his action cannot be maintained, now offers a deed to cure this defect —

—

Charray.
v.
Macauley

Action of Trespass for havg cut timber on Pltff land

Ogden for Dft admits that the defendt did wrong in cutting down the timber on the pltffs land — but contends that the damages are trifling, as the timber cut down has been taken away by the Pltff —

St. Michel
v
Lalonde

On hearing on law
Beaudin for Pltff. refers to Poth. Con. Vente. No 83.

Oldham
v
Dumont

Action pro. tem. for removing a dam built in the River by the Defdt.

Ogden for Pltff. If court is not satisfied as to the time the dam was removed, it will send back the case to the Experts to settle it — if they are satisfied on this point all Pltff asks is his costs of suit.

Rolland for Defnd. contends that the report confirms his Plea, and therefore action ought to be dismissed —

Drennan
v
Taylor

Action on a Lease. — to repair premises leased

Stuart for Pltff. Two pleas pleaded to action — both bad —
1st. Plea. not Guilty — this not applicable to Contract —
2d. Plea — admits Pltff. right, by saying that £5 or £6 — an sufficient to make the repairs — this destroys first Plea —

Doutre — Pleas regular —

Macé
vs
Bricault

On Report of Practiciens. — Bédard for Plff.
Nothing for by Defr.

Lapierriere
vs
Duplessis
&
Duplessis
en Garantie
vs
Tremblay.

Action for Lods & Ventes.
Stuart for Defr. admits right of Plff — but contends that he is entitled to his recovery over agt. his Garant Tremblay in consequence of a clause in the deed of Sale from him to Duplessis, by wh. land sold is free and clear of all Seigniorial rights —

Bedard for Tremblay, contends that the clause in the deed of Sale does not go to exonerate the Defr. from paying the Seigr. rights, it is an extraordinary clause & would have been requisite to be more explicit to infer that land was sold clear of all such rights —

Vigé
vs
Dupré & al.

action for delivrance of a legacy. —

L. M. Vigé for Plff. — Only question whether plff. shall be bound to give security before obtains poss. of the Legacy — Plff contends, that being the presumptive heir of the late Mrs Campbell, they are not bound to give security — Denizt. Vo Usufruit. No 32. — The Testator does not by her will require that any security sh. be given. Lacombe Vo usufruit. Sec. 2. No 3. — Pas. p. 915.

Bedard for Defdt – The Defs. consider the Interest of the Plffs children in opposing this action – as they are minors – There appears to be no exception to the rule of giving Security by an Usufructier, except the father in the property of his children – this does not apply to the mother, more especially in case of a second marriage refers to Lacombe – authority cited – cite also Denizart –

Vigé for Plffs – contends on the authorities cited that Plffs ought not to give security –

Archambault dal. Syndics
v.
Mondor dal.

Action to recover ~~Defts share of articles to be furnished for the construction of the Sacristie of St. Eustache~~ damages founded on an acte of Reparation –

The Defendt gave security to perform the necessary work and failed in performance – action for damages – founded on the award of Experts named by the parties – New Experts ought not to be named – but it will be necessary to send back the report to the same Experts to ascertain the extent of the repairs to be made & the damages sustained –

Ross for Dfs Demands that new Experts be named

Truchon
vs
Lemai.

Action for arrears of Rente & pension —

On Exception pleaded by Defendt — founded on a transaction entered into by Pltff after the institution of the action —

Bedard for Pltff contends that the transaction is void, as Pltff took advantage of ignorance of Pltff that a second action was instituted against him, on 1st June last — Transaction if valid at all can extend only to one of the suits now pending against him

Domat. Liv. 1. Tit. 13. Sec. 1. p. 147. No 3
Tit. Des Transactions
1 Pigeau. p. 14.
Pothier Obl. No 91. 98

L. M. Viger for Defdt contends, that there is nothing in the Transaction of a nature to impeach the validity of it — being made with the full consent of the parties —

Delanaudiere
vs
Vigé ous

Action to proceed to a partage of a certain real Estate left by late Mr Campbell —

L. M. Vigé for Defdt By the will it wd appear that there should be no partage of the property until after the usufruct extinguished —

Bedard for Pltff. The Pltff, in consequence of her mother's Renonciation, now is entitled to one half of the property as Propriété theref — and therefore entitled to a partage with the other heirs — particularly where there is no injunction in the will for the parties to live in community —

Lebrun Suc. p. 587
Liv. 4. Ch. 1. No 4

Daillebout
Decheneaux
Coffin. Gart.

On account rendered by Defendt—

Laisois for Pltff objects — to sums expended by Defendt—

1. To 84t. ps. to Mr Vigé for making an opposition — this sum he rect. from the Sheriff on the Instt. of Distribn—

2. To 56t. for draws. up his acct—

3 To Journeys made by Deft—

4 To Commission of 6 pr Ct. for his management — If this be allowed the other charges made by him ought to be deducted —

Mr Decambien for the Gart— That he is not bound in any Garantie towards Defts. have. ps. over to Pltff all the monies he rect. from the Deft—

L. M. Vigé for Deft— The comptable is entitled to the expense incurred by renders the acct— Is entitled to obtain all his Costs agt Mr Coffin his Garant, from whom he derived his authority to act — & Defendt. was interested to have Coffin in the Cause to justify the acts done under the authority derived from him by Deft—

Perrault
&
Jeannot

On action for arrears of rents & pension Viagere—

Vigé for Defendt— An acte de Constitution de Rente

may

1. Bouvier. Tit. 8. ch. 2 sec. 2. art. 8. p. 336. Journal des audes 24 Av. 1661.

may be considered as an alienation & sale of a realty — and where there is lesion as in this case the party ought to be admitted to make proof thereon —

Lell. Vigé — Cites Case. Dorions. v. Allard - determined in this Court upon authority of Poth. Constit. a Rente. Nr. 215. 218 233.

Vigé in reply, the question has never come before the Court in the point of consideration now offered of Lesion. —

Powell. v. Taylor —

Action on Lease — for rent —

Stuart for Dft. There was first a Sale of a land made by Defendt. to Pltff. & then a lease made by Pltff of the premises sold to the Defendt. for £25. a on qt. the action was brought — This was to cover usury — That Pltff was never Tutor to the minors Holt - having only married the mother of these minors — He had no authority to purchase real property for the minors —

The farm instead of being worth £25 a year is proved not to be worth above £4. 10 ff an — Evidence of two Peers

Gerrow for Pltff. Dft. by contracting w. Pltff as Tutor has recognized his capacity, & cannot come at his own act — There is no proof of the Usury —

Legault
vs
Groux
&
Legault
Intervs

Action for damages for entering upon Plff's property
& taking away his Cattle —
On Intervention of Pascal Legault.

Stuart for Plff. contends that Intervn - is improper
and unnecessary & ought not to be allowed —

L. M. Vigé - The Intervg party intends to shew that
the Cattle in question were his property and that he sold
them to the Defdt - & therefore entitled to intervene —

Ray
vs
Langhorne

Action for damages for non-delivery of 2 maple
logs —

Boston for Dfdt - contends that parties never agreed
upon the two logs sold - nor was any delivery made
Verbal testimony of sale ought not to be admitted — There
was a written agreement made between the parties, wh. was
put into the possn of Plff. & qt he has not produced

Georgen for Plff contends that evidence is complete

Wednesday 19th October 1814.

Laporte
vs
Paradis } Instt - cost on suit on Hab. Corp

Trichette
vs
Brisbain } Delay to the first writ. day in Vacation —

St Michel
vs
Lalande } Motion granted - Osborne for Finan & mo. granted —

Hubee
vs
Meunier } Incp. for Plff

Edwards
vs
Charles } Instt

The King
vs
Mondelet } Motion dismissed - too hasty a proceeding - no delay

Arnoldi
vs
Pernault } Instt. agt. Curt. Pernault - bail

Dillon
vs
Ermatinger } Instt

Genus v Laisseraye } Lead to—

Bricault v Bricault } no grantee

Dunlop v Roi — } Report of 2 arbit. hom.

Drenan v Taylor } Demurrer to plea rejected—

Lalonde v Lebeau — } The Court rejects the mo. as it appears that the last proceedings in the Cause was a Cur. advis. vult.—

Allen v Peaslee v Oppos[ts] — } Pltff's mo. to reject the oppositions rejected.—

Wilson v Manson } On Pltff's mo. to take out monies deposited in Court as a tender by Defd[t]—
Boston for Defd[t]—Pltff opposes the motion—

Jettè & al' vs Desautels } Ord Pltff. mo. to fix day for hearing Defd. on faits & articles —

Defd objects to 3. 5th 7. 12th. 13. alw. 30th 31. —

Jobert vs Laing } Ord mo. for Lucft. —

Thursday 20th Oct. 1814

Taylor vs Drenan } mo. to grant exam. Defd. on faits & art. before the Exptt —

Johnson & Hutchens vs } Lucft —

Jobert vs Laing. } dis. granted to dismiss action —

Archambault vs Mondou &c } New Exptt to be named. —

Lobbinière
vs
Beers. — } Demand of 10/- for expense of a copy of the deed on
which the demand is founded —

Bidegain
vs
Aubuchon } Judgt. on act. rendered —

Legault.
vs
Group. } Intervention rejected. —

Perrault.
dup. vs —
Jeannot } Exception dismissed. —

Park. —
vs
Ames. } Judgt. — diffce in opinion as to Costs —

Rule of Practice in regard of Writs of Capias

—

Alexandre
vs
Douglass. } Dfdt. moved for a com. Rog.re
Objected by Dfdt. that more than 4 days had elapsed
since the issue had been formed between the parties —
The Issue was joined in the Cause in the vacation, and a
hearing on law was had on the 5t. or 6t. day thereafter an order
made that the parties shd. proceed to their proofs —
Dfdt. contends that the operation of the Rule of practice was done away
in consequence of the hearing on law 6t. carried the Cause over the four
days, without any fault of Dfdt. —

G

The

The Court held that where a hearing in law took place in a cause so as to carry over the Case beyond the four days the operation of the rule was suspended until the Judt rendered on such hearing on law, but that the parties should within 4 days after such Judt rendered. —

Munro
Parsons.
and
Contra.

On Otff's mo. to examine the Dfd. before Auditors. Ross for Dfdt objects to the ex. of Dfdt in this general way — as facts should be settled & specified upon which the party shall be examined — Mo. rejected —

555.

111. 2. 2

555. 10. 10

83. 6. 8

638. 17. 6½

75. 6. 8

83. 6. 8

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833. 6. 8

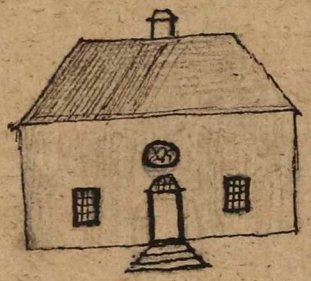
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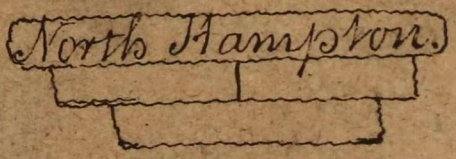
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North Hampton.