Kings Bench. Montreal.

Civil Pleas.

April Term... 1816.

June Term. do.

October Term. do.

Kings Bench — Montreal.

Civil Pleas.

April Term 1816.

Monday 1st April 1816.

Present.
All the Judges.

Tuesday 2d April 1816

Fromentau
vs
Viger.

Action agt Defendt for negligence in not conducting a suit in wch he was retained as attorney of Pltff — & for refusing to return the Pltff's papers —

The Pltff in person stated — refers to exh. No 2 Defendts letter, shews that he undertook to prosecute the Cause He undertook in Augt 1814 to institute action, but did nothing till June 1815 — notwithstanding the repeated demands of Pltff.

Exhib. N°. 4. proves demand of papers — On the Institution of the action in Octr. 1815. the Defendt. filed the papers in question — edits 2 Arrets. &c. Procureur — liable for faute legère. Submits damages to the Court —

Vigé for Defdt. — There is no proof of facts alleged —

Aylwin v. Cuvillier } On Defendts. mo. for pub. of Com. Rog.e —

Rolland for ~~Defendt.~~ Pltff — The Interrogatories were not allowed nor consented to by the Defendt — & therefore the Com. Rog. issued irregularly

Beaubien for Defendt — regular notice was given to Pltffs counsel —

Com. ordered to be opened, sauv. objection

Auclaire v. Dorions } On Pltff — mo. to reject exceps. filed by Defendt as not filed in time. —

Stuart for Defdt. — action ex delicto — but irregularly brot — to this Deft. has pleaded a demurrer — exceps. per. en droit —

Wednesday 3. April 1816.

Sylvain v. Cuvellier — on Pltff. mo. to suppress Com. Rog. Return, as has issued irregularly —

Beauchein for Dfdt — The Com. Rog. issued regularly and if it had not, yet the irreg. was waived by Pltff, as he joined in the Com. — There was an order of the 2 Judgs, if it was irregularly made, the motion of the Pltff. ought to have been to have set aside the order so made, because the Judgs who made the application are presumed to have seen that suff. notice was given before they made the order —

Rolland for Pltff. The Pltff was not called upon to see any allowance was made upon the Interrogatories by the Judgs and if this order was made, it was without the participation of the Pltff — a notice to attend at the ~~Judgs Chambers~~ Prothys office is no notice to attend at Judgs Chambers — cite case of Forsin v. Bouchen —

Benton — v. — Jennidal — on hear. reports. Judt. to be ent. in the Causes —

Bellows v. Warner — Action on promissory Note —

Sullivan for Dfdt. states exceptions filed by him to be a demurrer to Pltff. action —

Ogden for Pltff - moves that excep^{n} be rejected, being à la forme & not filed in the 24 hours - -

The distinction between Defenses au fond en droit, & Exceptions peremptories à la forme. -

1. Excep. peremp. à la forme proceeds upon the principle, that what is stated in the Declaration is improperly or imperfectly stated - The Defenses en droit, upon the principle, that what is essential in law to entitle the Pltff to recover, is not stated at all. -

2 Defenses en Droit - is to the substance of the Declaration (the General Demurrer of the English Law) - The Excep. à la forme to the form only of pleading - (the Special Demurrer of the English Law - 1 Ch. Pl. 639. 640 -

Thursday 4th April 1816. -

Bellows. - Warner. } The motion granted, as matter pleaded was stated in shape of form - and also pleaded in a subsequent part of the plea to the merits, as matter of substance the Court rejected the matter of exception pleaded to the form as not within the 24 hours &c

Sinclair Dorion } The excep. that Pltff had joined matter arising ex delicto and ex contractu in same action, rejected as being to the

the form of the action, and not to the substance of the right claimed —

—— Friday 5th April 1816. ——

Aylwin v. Cuvillier } On ~~Defts~~ Pltffs mo. to suppress the Com. Rog. & return, sued out by Defendt. irregularly —

Rolland for Pltff — rules of Prac. requires a special notice for settling the Interrogatories before proceedg. to make up the Commission Rog — wh. notice was never given to Pltff — and the appearance of an Atty. at Quebec on behalf of Pltff on that Com. does not cure the defect of such notice —

Denis v. Lebert } action of damages for trespass by Defts. cattle on Pltffs. Land —

Bender for Pltff — contends that he has made proof of his demand — objects to testimony of John Sangster, as farmer — Jac. Legault — as neighbr — & interested Witn —

Rolland for Deft — Parties submitted to arbitration & therefore this action ought not to have been brought — As No proof of damages since 16. Augt — has been made — Objects to testy. of 2 Servants of Pltff — Cattle passed thro' fence of our Tenant —

Miller
" } Hunkin

action for money pd to Defendt
over till to morrow

Saturday 6th April 1816.

Sylvain
" } Cuvillier

The Plaintiffs motion granted — the Court being of opinion that there must be a special notice to settle Interrogatories before issuing Commission Roz. and a notice to attend at Prothys. office to make up the Com. is not sufficient to comprehend such previous notice to settle the Interrogatories. —

St. Michel
Lalonde

On Report of Experts —
Can submitted by parties —

The King
" } Cuthbert

On Rule to shew Cause why Certiorari issued in this Cause shd not be quashed —

Opens for Defdt — The Recognizance entered into not sufficient — not signed by party presents. Certiorari

2. Variance between Writ of Certiorari & Petition for same.

Nigel for Prosecutor — admits there are irregularities in the proceedings, but contends that Defdt cannot avail himself thereof, or if he could, he ought to have done it at time he was called upon to shew Cause why the writ shd not be granted — But after he has made a return to the writ he ought not to be allowed to object to the issuing of the writ —

Agnew in reply — The Defdt had no opportunity to make his objections until his appearance was entd in this Court The Recognizance could never be justified for the Costs of the Prosecutor —

Galbraith
v
Evans

On Rule to shew Cause why Indt shd not be amended. —

Ross for Defdt — action by Pltff as father of his minor Daughter for injury done to him by her having been debauched by Defendt — action ought to have been in the name and on behalf of the minor — therein Defendt is liable to another action for the same Cause at Suit of the Minor

The

The writ of Venire issued irregularly, as not tested in the name of the Ch. Justice of this Court —

No personal wrong done to the party to entitle him to have a trial by Jury —

Vigé for Pltff — The objection to the regularity of the Venire is too late after Verdict —

Action is maintainable by father for injury done to his child — vo Injure — Dic. de Droit — because the injury reflects upon the parent — Domat. liv. 3. tit. 11. art. 2. 12 on Droit Pub. Rep. vo Injure — p. 238. 2d Col. Guy Pap. p 786. quest. 864. —

Stuart for Defendt — The person complains of an injury must have an immediate & appreciable a prix d'argent to support an action in a Court of Justice — the mere mortification felt by a father for the wrong done to his child is not so — The action given in the French law for such Injuries is more of a reparation a criminal proceeding — but there could be no pecuniary damage granted upon such proceeding — action not founded on a loss of Service — The minor himself could not have maintained an action on the facts stated in the declr. — Case not cognizable by a Jury.

a

as no personal wrong was done to him —

—

Griffin & ux
v.
Fraser & al

On Exceptions filed by Defendr

Stewart for Fraser — 1. The Defnd. Fraser is sued as Tutrix to James Leslie & wife —. 2. There is another suit pending between the parties —

Sullivan for Leslie & wife — irregularly sued as under the tutelle of Juliana Fraser — 2. The exclusion of Community between Leslie & his wife shews that he is not liable in this action — & 3. Lis pendens —

Sewell for Plff — Defnd. Fraser not sued as Tutrix to Leslie & wife — 2. As to Lis pendens — ~~dismissed part~~ — as to Leslie's plea of no Community — the mar. Contract is admitted — but no Inventory of respective estates appears —. Pott. Comte. Nº 97 — 362. 464 — at all events Leslie as administrr. the Estate of his wife & to support a Judt — of her, ought to be held in Court —

Sullivan — notwithstandg. the Separation contractuelle of Leslie & wife, he ought to be put out of the Cause, —

Bell
vs
Kemp

action for assault & battery & imprisᵗ —
Sewall for Defendᵗ — pleads, lis pendens.
The Pltff discontᵈ during the vacation — but this
is not-suffᵗ — ought to have been done in Court —
Tidd's Prac. 841 — The cause is pendᵍ until determined
by Judgt. of the Court — 295 —

Ogden for Pltff — The first cause is discontᵈ — every
party has a right to discontinue on payt of Costs at
all times —

— —

Monday 8th April 1816 —

Witness day —

— Tuesday 9th April 1816 —

Witness day

Wednesday 10th April 1816

Coleman
vs
Evans —

The Court were of opinion that the action
was maintainable, & dismissed the motion
in arrest of Judgment —
as to dpft in Venire, cured by Stat. of Jeofails —

The King v. Jas. Cuthbert } Rule for quashing Certiorari discharged —

Bell v. Kemp } Exceptions over-ruled — Constant practice of Court to discontinue a Suit in Vacation.

Ansley v. Gibeau } 479 On Dfts. mo. to reject 2 deps. improperly put on Record by Pltff.

Debartzch v. Duvert } action for recovery of Lods & Ventes on a sale by an heir to his Co-heir, of his share in a joint property. —

Rolland for Pltff — Contract of 22 July 1814 is an act ~~of~~ carrying mutation of property — possn. under it — & resiliement Prud. Ch. 48. p. 355 — it is an act volontaire, possessn. was had under it — les choses ne sont plus entières — Id. 358. 359 — There was no Sentence declaring the acte resolu — qt. was necessary to avoid the Lods & Ventes — Id. p. 351 — Belloc. T. Fief — double droits dus au Seigr. sur resiliement volontaire — Gr. Cout. 1175. 1 Vol. No. 39 — Dup. bo. 2. Ch. 2 Sec. 1. p. 97 —

Bedard for Dft. Not an act of resilement, but an act of resolution of the agreement between the parties — Pand. ch. 66 — The first act was merely an act of partage or equivalent to it — The reasons of rescision stated in the act between co-heirs, are that the act was onerous and disadvantageous — and this fact can be proved — & if party did not consent the Defd. could have compelled him to a resolutory act. Pand. 348 — 350 — considered as a sale of land never been effected — Poth. Trif. 136. 137. 140. —

Rollard in reply — No arrangement de famille — the party could have sold the property to any other person as well as to Defendt — The rescision is for a different consideration to that for of the act was just made — There can be no proof made here of lesion as proper parties are not before the Court.

Lanctot ~ Fontaine

action on deed of sale —

Ross for Defendt. The land sold is not in the Seigniory of Lasalles, as stated in Deed, but in the Lands of the Crown — That altho' Defendt has sold the

land

Land to one Lamoureux, yet he has a right to oppose this to the Pltff, as he the Defendt is the Garant of the Lamoureux —

Cr. Vente, N°86.

Lacroix for Pltff. The Defendt has sold the Land to Lamoureux in 1809 who is now in possession — he cannot come aft. his own act. nor is Lamoureux before the Court, nor does he complain. —

Porter
Cameron

Ord. rule to shew Cause why an exception filed by Defendt — shd. not be rejected, as 2 Jurors were not deposited wth it. —

Thursday. 11th April. 1816. —

Grant
vs
Briscbois

This Cause had been set down for the ex. of witnesses during the last vacation, but owing to the Sitting of the Court of Oyer & Terminer the Enquête days were not had, the Pltff now moves for ex. wits. next vacation — to wh it was objected under the rule of practice that the motion shd have been made the first sitting of the Court after the day fixed for the Enquête, and was therefore now too late — .

Mongrain
vs.
Parisien.

Action for recovery of Lods & Ventes —

Beaubien for Pltff — Defts have pleaded an Exception, stating that Pltff. are not legally infeodés & in poss. of the Fief — It is a maxim nul terre sans Seigneur

Fep. 112

Over for proof —

Thayer.
vs.
Curtis.

Action of assumpsit for goods sold
Tried by Sp. Jury —
Verdict for Pltff. for sum demanded

Lussier
vs.
Bissonet

On rule to shew Cause why the Interlocutory Judgt of this Court shd not be amended —

Bedard for Pltff — moveables given shd be estimated at time when given — Immov. at time of decease of Donor —
The act. is not regular — not sworn to — There must be a new estimation according to the above principle —
Poth. Don. entre vifs — p 515. —

Beaubien for Defts. agrees to an amendment of the Interlocutory — That Pltff ought also to be held to render an act —

Bedard in reply — The Pltff. not bound by Judgt to account

Fraser
vs
Forbes
et al

Action on Promiss. Note —

Order for proof.

Belanger
vs
Moss

On Dfts. mo. to reject Rps. became not ent. on the list of Exhibits — motion withdrawn

Saturday 13th. April 1816.

Witness — day.

On Petition of
Benj. Lepée

Rps. Tutelle.

On application of the Petitioner for appointment of a Tutor & Sub-Tutor to the father of the minor having neglected to do so.

There can be no Tutor adhoc to a minor who has been deprived of his natural Guardian, in that case there must be a general appointment of Tutor, as a Tutor adhoc is named only in the case where the natural Tutor or the Tutor already appointed cannot act —

Mtés. 22
68
83
89.

Monday 15th. April 1816. —

Witness — Day. —

— Tuesday 16th April 1816. —

On Petition of Aaron Allen — ex parte. —

35. Geo. 3. S. 8. ch. 3.

On motion for a Rule on the Police Magistrates to shew Cause why a mandamus shd. not be granted enjoining them to grant a Licence to the said Aaron Allen for keeping a house of Public entertainment at William Henry — cits. 3 Bl. C. 110. —

see Giles' Case. 2. Str.

Johnson. v. Ph. Hutchins

On Deft's mo. that Plff's answer to 4th Interrog. shd. be suppressed, as not containing a sufficient answer thereto, and the Plff held to appear and answer over to the s. 4th Interrog. —

Gale for Plff contends that the answer is sufficient —

Odell. — v. Scott — and Conkey.

action for flour sold —

Sherwood for Defendt — Experts must be named to ascertain the facts in dispute — the flour being unmerchantable at time when sold —

Sewell for Plff — at time when flour was sold it was 14 dols ℔ barrel — this was sold for 13 — & Deft declared himself satisfied with it — at a subsequent

period

period after the flour had been delivered the Defts. agreed wt. Pliff that a deduction of 20 or 30 dollrs shd. be made upon the balance then due — Too late now to examine the flour from have been kept upwards a year in the poss. of Defts — and besides there is no proof of the identity of the flour. —

Stewart in reply — There was not only the legal warranty qe is implied in every Contract, but an express warranty particularly in regard of the flour in Pieces to qe Defdt at time objected — There was no special pleading of the subsequent agreemt to take 25 a 30 dollrs qr was necessary but besides the fact is not made out. —

—

Perrault & Lafresnaye

Action for goods sold. —

Rolland for Defts. The declaration is irregular not being signed by Pliff, or any person authorised by him — on 14. Febr. 1816 — Beaubien appd. for Pliff, till then proceedings are irregular — action ret. qe an exhibit filed 10th. too late — claims that Dep. of Wm Gregor be rejected from record as null in law. cite. Ordce 1667 — tit. 22. art. 14. 16. & same forms shd be observed in Commercial cases as well as others — —

Beaubien for Pliff — all prior proceedgs confirmed by his appearance for Pliff — has had no notice of mo. to reject exhibits

Bell v. Kemp et al.

action of assault.—

On rule to shew Cause why plea sh'd not be rejected, as having been filed ~~too late~~ — irregularly, havg already pleaded an excep. to the Pltff right of action [4] ~~[struck out]~~ & ~~has been determined agt Deft~~ 2. Plea not inscribed on the list of Exhibits on the 11th when filed — on 13th the plea was so inserted, but it was then too late —

[4] and ought to have joined therewith any other plea to the merits he had to make, but this Excep. havg been decided agt him he cannot now file a Plea to the merits. Reg. Prac Sec. 11. No. 5.

Sewell for Deft — Not bound to plead to merits before 13th but he pleaded on 11th — The plea filed on 11th was in abatement — refers Sec. 11 No. 5. p. 24 — & not bound to join plea to merits with it.

That rule as to inserting Plea on list of Exhibits does not apply —

Ogden for Pltff — The excepn. filed was peremp. en droit and was dismissed, & he had no right to any new pleads. to the merits, as it ought to have been joined wt. such Excepn. Peremp — refers to Sec. 11. No. 5 — The pleads not being inscribed on the exhib. is suff't — to support Pltff's motion —

Robillard Cur' v. Ranger

action for arrears of rente & pension viagere —

Ross for Deft.. The late Ranger lived w. Defendt at his pot & feu & was entertained by him in lieu of his pension wt. wh. he was always satisfied —

Stuart for Pliff. The action is for a debt due to the Suc. of deceased, & only question is Defdt. has pd. it or not, the plea & facts proved under it wd. only amount to a release — but not proved —

Munn
v
Pickle.

Action for oak timber sold to Defendt —

Stuart for Defdt — has made a tender — Pliff has not made proof of sale or of the value of the timber — & therefore tender became unnecessary — Fair & article — proves nothing —

Wednesday 17th April 1816. —

McMurray
v
Armour & al

Action for money lent —

Gale for Pliff — only question is whether Pliff shall recover interest or not —

Hall —
v
Prohibited Goods
&
Barret. claimt

An claim for certain number of Scythes seized by Prosecutr —

Ross for Prosr. Scythe, seized as a foreign manufacture imported into this Province from the united States under St. 52 Geo. 3.

Sewell for claimt — The claimt. was allowed to pass the Custom House at St. Johns & had a permit to import them the seizure was afterwards made by an officer at Montreal —

Ross in reply - The Collector at St Johns could not dispense with the Act of Parliament -

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Forcier. } action for recovery of money deposited in the
n } hands of Defdt -
Boucher }

Stuart for Pltff - Defendt was an Innkeeper, and the Pltff a traveller who lodged at his house - The Plea that money was stolen, not-admissible from an Innkeeper as it wd not discharge his liability - Poth. Contr. Depot - But there is no evidence to support fact that a theft was ever committed - The only proof made is the declarations of the Defendt himself, wch can constitute no proof -

Rolland for Dft - There was no deposit made by Pltff w. Defendt - It was no deposit wt. an Innkeeper - Poth. Depot. N° 76 - Dec. Droit. Vo Hotelier - auberiste - Nouv. Denizt. Vo auberiste & 3 -

Stuart in reply - The money deposited was by the Pltff and at Defendts - & the principles of law under wch that deposit was first made must remain while the Defdt retained the Deposit - The Innkeeper excused only in case of force majeure - not for a simple larceny -

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Hamilton
vs
Millar &c

Action for Oak timber sold to Defdt.—

Boston for Defdt. The case hinges on evidence of one Campbell, a Cutler — whose evidence ought not to be credited — There was no delivery of the timber — Defdt. never directed the timber to be called — nor did they ever accept the Cutler's bill, but refused it when tendered —

Ogden for Plff — the timber was called under the directions of Defendr — who appears also to Gaudet for this purpose —

The Heirs Foretier
vs
Pothier. —

On Petition of Heirs Foretier to set aside a Scellé granted at the suit of Pothier apl ds Heirs. —

Stuart for Defdt. Case not regularly before the Court. —

Vigé for Plffs — The time for opposing the Scelle has lapsed.
Stile de Paris. tit. 17. Mat. Dom. Sec. 1 —
Pratique de Ferrier —
2 Pigeau 285. — when Inventory made —
Denizt. vo Scelle. No. 74. Even when begun —
Poth. Proc. Civ — p. 89 —

That person demands. has no quality to obtain Scellé. The will not acknowledged — nor Plff an Executor —
Exors not acting, the heirs & the Legacies —

4 Gr. Com. p. 279 - wht effects to take effect of succession on giving security to the Executor -

1. Argou. 390 -
Poth. Tr. Don. Testam^ts

Bedard for Ex^tor - The Testament of late P^re Fortier has been acknowledged -

The Ex^tor was proceeded to proceed to the Inventory -

The Exor is seized of the moveables
4 Gr. Com. art 297. p 275. 276 -
Poth. Don. Test. p. 360 - Exor is Sequestre of moveables
Troncon. 636. -
Here Invents. made without participation of Executor -
Denizt. v^o Ex^tor Test. N^o 21.
Bourjon. 376 -
Dec. de Jurisp^ce

If the Scellé be taken off the moveables will be sold
The Ex^tor is at all times founded to put on the Scellé
2 Pigeau 250. to 315 - & 271 - until the Inventory be made -
2. Bourjon 376 -
Denizt. v^o Exor Test. 24. 25. 26 -

By act of Indicature art. 8 - the Scellé may be demanded as well in as out of Court -

Stuart for Exer. The Case not before the Court — as the writ not returned — There could be no appeal from the Judt. given in this stage of the Cause nothing regularly before the Court — The opposition made by the Petrs was irregular & improper, as none of those grounds on which the law allows — The Court cannot determine on the validity of the order on the opposition so made — must be presumed right & given on good grounds —
No new matter not before the Judge when he granted the order can be received in this stage of the Cause until the merits of the Case are heard —
1st argument of Vigé — time lapsed — no authority to shew such a prescription as the Executor — the authority applies to the intervention of a Stranger — a Creditor. —

Rollard for Baron Lewis, heirs & interested
The title of Exer is sufft. to warrant demand for Scellés. of 4 persons, two of whom only are heirs —
Instruc. en Droit Franc. —
Nouv. Denis. Vo Exn Test. —

Papineau in reply —
The proceedings in this case are by Law Summary & the Judge who gave the order is competent to decide any opposition arising thereon —

The title of Executor not acknowledged — nor will proved — The inaction of the Exrs to prove the will must deprive him of this right — In consequence an Inventory has been made by the heirs in possession — this sufficient if made only by one heir, as there can be no reason to apprehend the dissipation of the property. as the property never under the charge of the Exrs since the death of the testator, but trusted to the heirs —.

Thursday 18th April 1816

The Heirs Forbes
v.
Forbes — } Order for scire facias withdrawn.

Starke.
v.
Odell. } On Defts. mo. to set aside the answer of Pltff to parts last — as irregularly taken. —

Maclaine
v.
Dorions } On Pltffs. mo. to withdraw his mo. for a trial by Jury made by him at the return of the Cause

Stuart for Defts. there be no withdraws a motion entered on the records of Court — it ought to have been a waiver of the motion to be so made — Mo. overruled —

M. Arthur Lab
M. Donald

On mo. to stay proceedings till Cort in another suit be finis —

Ross for Plff — not same cause of action, & parties different —

Stuart in reply — same cause of action, only more extensive —

Archambault
v
Mondor Lab

On report of Experts. —

Vigé for Pltff. prays hom. of 2 reports of Expts and Defendr condemned to pay the money stated in the sd reports. —

Ross for Defdr — arbitrators had no regular copy of Intabulation Indt. upon them — Arbitrs have not complied wt. sd Indt — have not brot up the notes they gave to the parties — They gave a new notice, but made no new report —

Hamilton.
v
Bowie.
& contra.

On rule to shew cause why Report of arbitrs shd not be homologated —

Ogden for Pltff — arbitrators dismiss Plff action because he has got poss. of the wood — this was done by order of this Court — in consequence of his action

On the Incidental demand, the arbitr. have allowed a certain sum to Mr Bouc, but have left the demand of Pltff open & refer parties to a new Law suit thereon when all contests thereon could have been settled on the present reference —

Vigé in reply — action in revendication — admits property of wood, but he had a lien on the wood cut, until he shd be pd his salaire in getting same cut & therefore a right to retain the wood — There was no question by the action as to monies paid by Pltff to Defendt, and therefore arbitr. took no notice of that point —

~~Johnson~~.

Berthelet
Munn
& contra } On rule Nisi why Exon shd not issue —

Morgueson & ux
v
Lawson — } action of petition d'heredité & fam erciscunda
On Exceptions pleaded by Defendt —

Vigé for Dfdt — There many other heirs, not joined in the action, & therefore this action en partage is irregular —
Cont. Soc. No 162. 164. Denisr. vo Partage —

Gale for Pltff. Not bound to join other heirs in the Suit — as there was no Community of possession, as Defend^t. alone possessed — But there are two actions combined, as well to render an acct. as to make a partage Jud^t. Pand: the first part of g^d. Pltff. are entitled to maintain — & the other heirs may be put in Suit for the question of partage. —

Chalifoux. v. Marotte. — & Montplaisir Tiers Saisi.

On Rule on Tiers Saisis to shew Cause why they sh^d. not be held to pay certain articles in lieu of those they declared to owe to Def^dt —

Stuart for T. Saisis — the proceeding is irregular, as the Rule is sued out by Defend^t — who can raise no contest of the kind, as Defend^t. is the Debtor — the contest can only be between the Creditor and the Garnishee. —

Ross for Defend^t — same Justice is due to Defend^t. ag^t the Debtor as to the Pltff — 1 Pigeau. 652, 657. 661. —

Proc. Civ. p. 197.

Allen
&
Mc Cord
dal

On mo. for Rule to shew Cause why a Mandamus shd. not be granted &c

Stuart for Applt — The mode of obtg licences is settled by St. 35. Geo. 3. ch. 8. s. 3 — The Certificate of a Church warden of that Church to qf the applicant belongs is intended by the Law — This Certificate was presented to the Justices and refused to admit him to enter into Security — No remedy without this mode of relief — Mandamus is a prerogative writ, & can be issued only from the Supreme Court in the District where the complaint is made — such as writs of Certiorari, Prohibition — &c — Com. Dig. tit. Mandamus — 4. Bac. Ab. 507 —

Rule granted. —

Friday 19th April 1816

Robillard
&
Ranger

Judt —

Galerneau
&
Evans

Judt —

Debartzch
&
Duvert

order for proof

Chalifoux. }
& }
Marotte. }
& }
Montplaisir }
Jal. T. Jaisis }

The rule discharged.-

Allen. ex }
& }
Mc Cordela }

On rule to shew Cause why Mandamus shd. not issue

Gale for Justices - the parish where Allen resides, is the parish of Sorel, and there is but one parish Church in that parish - and the certificate must be granted by the church-warden of the parish - such has been the opinion of the Justices uniformly in all cases - without reference to any religious opinions -

Stuart for Allen - Prot. Religion that of the Sovereign and the estab. religion of this Country - and the Church-wardens of any Church of that Religion must be known as much as that of the Roman Catb. Religion -

Parish is only a certain extent of ground within which Ecc. authority can be exercised - but there may be many Churches of different persuasions within that parish a Church-warden de facto, is a person qualified to give the certificate required -

Berthelet v. Parisien. } An action to eject Defd. from a house — Bedard for Pltff — Judt. has been given on the principal part of demand, now demands Judt for the damages assessed by Experts, and also full Costs — Stuart for Defd. resists right to full Costs. —

Saturday. 20th April 1816. —

McGillivray et al. v. Débarasse. } Judt. ~~permitting~~ admitting proof of marks — by Defdt — by proving hand writing of witnesses to the note without proof of Defendt. signature —

Morguson & ux v. Lauzon — } Judt. admitts — Pltff to bring in other heirs

Forcier. v. Boucher } Action dismissed, as the depot was not made w. Defendt. as a depot d'hotellerie. —

Hamilton. — v. Millar & Parham. } The evidence of Campbell as agent of both parties admissible —

Munn
vs
Pickle } Inj^{t}. for £30—

Chalifoux.
vs
Marotte.
&
Monplaisir
Dal —

On Plff^{s} mo. for Inj^{t}. for selling articles, declared by the Garnishees to be in their hands belonging to the Defend^{t}.

The Defend^{t} moved that part of the said articles being a mode of pension viagere, and the only means of subsistence he has got, should be allowed him —

Objected that the right of application cannot be considered as there was no question regularly brot. before the Court by pleading — and after this opinion was the Court and granted the Plff^{s} motion —

Rule of Practice in regard of the fees due to the officers of the Court —

June Term 1816.

Saturday 1st June 1816

Ch. Just. & Mr Foucher absent.

Monday 3d June 1816.

All Judges Present.

Perrault.
v
Papineau. } On Plff. mo. for enquete as Defd. had not done diligence on the rule he obtd. for a Com. Rogr—

Objected that mo. premature as he has not had an opportunity of forwarding the Com. to the place of destination as navigation was not open—

Belanger
v
Moss— } On Plff. mo. for ex. of Defd. on fact Last—

Ob—by Defd. application too late— no reservation on the day of Enquete— & besides appn. ought to have been made on first day of Term—

Rollin Has obtd. a Com. Rogr. qr. is not yet sued out— not true— Wits. did not appear— & no appn. for Contr. of Enquete—

Noreau
v
Pickle

On Defdt mo. for delay to plead, as Defdt was absent at Quebec when process was served & Counsel not advised as to the defence to be made, more especially as action is special

Lussier
v
Bissonnette

On mo. to name an Expert & under an act—

McDonald
v
McLeod.
& al—

On Defendr mo. why Capo. obt. not be quashed & set aside—

Ross for Defdts— Plff not entitled to an arrest of Defendt for an unliquidated Demand— When the demand is unliquidated, the discretion of our Judge not suffe to grant an order for an arrest— no debt sworn to—

There is no allegation in the declaration that the Defendt was about to leave the Province—

Stuart for Plff refers to case of Ashman v. Lovejoy and Sutherland v. Campbell—

2 Bl. 238— — money recovered by proceedings in a Court of Justice not a debt—

Thompson v. Lindsay. } On ~~Pltff. mo. for ex. of~~ Deft. mo. that Interrogs proposed by Pltff. to Defendt. shd. be set aside —

Ross for Defendt. — The action is of assumpsit agt. Defendt. as an Individual — whereas Interrogs. contemplate a diffrt. kind of transaction wt. Defendt. as a public Character,

St. 28 Geo. 3. c. 37, s. 25. Collector of the Customs — Bell. v. Denau. 19 Feby. 1810 —

Wednesday 5th June 1816. —

Perrault v. Papineau } The pltff. mo. granted saving rights of Defendt. under the order by him obtd. for a Com. Rogy. —

Bellanger v. Moss } Pltff. mo. for ex. of Deft. on faits et art. rejected as made too late —

Noreau v. Pickle } Defendt. mo. granted —

Lussier v. Brissonette } Interlocy. prolonged —

On Petition of Ch. Ogden } On mo. for a Habeas Corpus —

The Petr. confined under a warrant addressed to the Crier of the Court of Provl. Court of Th. Rivers, to attach the Petr. to answer to certain alledged Contempts of that Court, under which he now stands committed without having been convicted of any Contempt — The grounds of application that the writ ought to have been addressed to the Sheriff of the District who alone can be warranted to arrest and hold the Petr. — That the Court cannot issue such Process for a Contempt — and that there was no Contempt committed — Writ of H. C., is besides a writ of Right.

1 A. Vin. abr —

Griffen & ux v. Fraser & al. } On Exception pleaded by Defendts —

Stuart for Defendts — This action brot. for an indemnification in consequence of McCord's Judt. agt. them — that Judt. reserves the right to Pliffs. to proceed on that Judgt. on the right of Indemnity, being quoad this object Interlocutory & still subsisting, & therefore the present action is unnecessary and improper —

OSullivan for Deft. Leslie — By his marriage with Juliana Langan, there is a Separation contractuelle, & therefore

therefore he ought to be put out of the Cause —

Sol. Genl. for Pltffs — Objection as to titles of parties ill-founded — The reservation to Pltffs of their right by the Judgt. to prosecute for their damages was proper, but as those damages accrued subsequent to that Judgt. it was not intended, nor could it, give a right to establish under that Judgt. damages which had not then accrued.

That as to Leslie's exception — if allowed, he ought to pay the Costs, as the Pltffs. were not aware of the particular arrangements made between him & his wife by his marriage Contract. —

Stuart in reply — The action en Garantie is *prospective*, and party entitled to all the damages qt. may result from the principal action even after its institution —

McDonald } McLeod et al }

On Rule to shew Cause why Pltff shd. not be held to give security for costs, as not living within the Jurisdiction of the Court —

Sol. Genl. for Defts. Altho'. stated in decln. that Pltff. is living at Montreal, & was really so when the Process was sued out, yet by affidavits produced by Defts. it appears that Pltff lives at a place called Red River in the Indian Country

was acting as a Governor in that Country, & had left Montreal & returned to that place before the writ was returned into Court —

Cob. v. Church
3e. Ap. 1812

Stuart for Plff — Rule of practice applies to non-residents and not to persons not domiciliated in the Province — It is enough that the Plff was resident when the writ was sued out —

—

Roi. }
v }
Allard } Action to recover money for 213 loads of sand furnished to Defdt —

Bender for Plff asks Judt for balance of £6. 5. at 1/8 ℔ load & costs as in the Superior Court —

Beaubien for Defdt — no proof of value of sand — as object is above 100s. & verbal testimony inadmissible and if admissible, the proof of a load of sand taken in the quantity by a Tradesman is 1/. as appears by evidence adduced by Defdt —

—

Tavernier }
v }
Sylvain. } Debt on a transfer of a Judt —

On Exception

Rolland for a Defendt — Judt rendered agt. Defdt & 2 others persons his Partners — That Judt rendered in favor of Blackwood the assignor of the Judt — is null quoad

Sylvain

Asylum as Service of Process was made on one of the Partners only, namely Cuvillier, after the dissolution of the Partnership, & therefore not binding on Asylum the Defts cites Jr. Soc. No 90. 157. — Repre vs. Société — Defendt. is in time to propose this nullity to the present action, Repre vs nullité art. 7. Chose Jugée No 17. Pothier. 2. There is no Indt. agt. all the Defendts only one Deft being named in it — 3 No proof of amount of Costs on Indt —

Beaubien for Plff —

It is not a moyen de nullité as Indt — that party was not duly summoned — & if so the party had his appeal Obl. No 18. 19 — & No 35. & 36 — It was rather a mal Jugé than a moyen de nullité, as the Deft. was called before the Court — That although the Partnership be dissolved this can only regard future transactions of the Individual partners, but cannot affect the rights of persons on the transactions prior thereto — & therefore Service on one of the Partners must be considered service on all —

Indt. must be considered to operate to all the parties, as it has been confirmed in that way as well by Indt. on a Rule Nisi, as by Indt. in the Court of Appeals —

Allen
v
M.c Coro
& al —

On Rule to shew Cause why a mandamus should not issue agt. Dfts. Justices &c to grant a Certificate to Applicant for obtaining a license to Sell Sp. Liquors in the Parish of Sand

Grant for applicant — moves that Rule may be made absolute with Costs, as being the 2. application upon to Tidds Prac. 933 —

Thursday. 6th. June. 1816. —

Miles M.c Donald
v
M.c Leod & al } Security for Costs ordered —

Michael M Donald
v
M.c Leod & al } mo. rejected —

Cantin
v
Leonard } On the first day of the Term the Pltff made a mo. & obt. an order to ex. Dfts. on fail & ant, & by mistake was not entered on the minutes, this day the Pltff in consequence moved that Dfts. shd. be ex. on the 10th. but gave no notice of the motion — To wh. Dfts. counsel objected contending that he was entitled to such notice and the contrary strongly contended by Pltffs Counsel — The Ct. under the Circumstances thought that notice was not necessary

Roqué ... } Action for seduction of Pltff's daughter. —
vs. } and damages £500. —
Couture. }

Trial by Sp. Jury —

The Midwife being brot. up and asked if during the pains of labor the girl did not acknowledge & declare the Defend. to be the father of the child — Objected to — as not admissible in an action of damages — is rec'd. in France only as an indice in a cause of filiation — Rep^se v^o Grossesse —

Objected to the evidence to prove that Defend^t. admitted he was the father of the child. —

Verdict for Defend^t

Pepin } Action to produce acquittance of Seig^r. on Sale
vs. } Defd^t. acknowledges he must be condemned
Arnoldi } to pay sum demanded

Pays an } Action to rescind an act of Donation executed by parties —
vs. } for not having complied wt. the conditions of the Deed.
Gervais }

Bender for Pltff. The Defend^t. has done none of the work on the land to q^s he was bound such as ploughing it making ditches &c 2. The fences leave gone to decay — & all other objects neglected —

Lacroix for Defendt— The Plffs have made frequent prosecn
agt Defendt. wh have always failed — that all objects of
complaint have been determined by those actions — Demands
that Experts shd be named to estimate what should be paid
to the Plffs in lieu of certain obligations which the Defde
is bound to perform for the Plffs. — —

Brace
v
Jones

On Rule to shew Cause why Report of arbitrs
shd not be confirmed & the action dismissed —

Sewell for Plff— Third arbitr irregularly named, not
by consent of the parties — no proof thereof — action has
been dismissed irregularly by one of the arbitrs & a person
S. to be a third one —

Odell for Defdt— agrees that action ought not to be dismissed
but sent back to same Arbitrs to specify their reasons
more fully as the whole facts are not stated on it —

Sewell in reply, as third arbitr has been irregularly
named the Case shd not be sent back to him, but to the
2 arbitrs originally named. — —

Mathieu
v
Contents

On Rule to shew Cause why action shd not be
dismissed from irregularity of proceedings —

L. M. Nijs for Defendt— The irregularity is not in
the

not in the original writ, but in the copy served on the Defend.^t it being stated 58^t. year of the King. —

Friday 7^th. June 1816

Witness day

Deboishen v. Laurin — } action ag^t. a marguillier for refusing a certif^t. to Pl^tff to enable him to obtain a licence to keep a house of public entertainment

Papineau for Defend^t moved that parties should be heard on the question of law touching the Pl^tff^s. right to maintain his action —

Stuart for Pl^tff contended that from the manner adopted by the Defend^t in pleading he was not entitled to a previous hearing on law, having by his plea so blended the law & fact as render it impossible to ascertain upon which the conclusions of the plea were founded and therefore it was necessary that the parties should first proceed to ascertain the facts alledged — That where a party means to have a previous hearing on any point of law, he must plead it specially and set out the reasons of it with a proper conclusion

thereon otherwise such plea cannot be received — and on the same principle it has been held in the Case of Griffin v Langan, that when matter of exception in law was joined with the fact, the matter of Exception was not liable to be taken from the record for not specifying the reasons or special grounds upon wh it was founded inasmuchas the Cause could not be delayed by such exception the party not being entitled to a previous hearing on law before proceeding to proof — That in this Case no injury can be done to the Defendt by proceeding to the hearing of the evidence first as the benefit of the law pleaded by him will still be reserved to him — That from the nature of the allegations contained in the Declaration evidence must be adduced before any decision can be had on the merits — Moves therefore that a day be fixed for evidence —

Papineau in reply observed — That by his plea he denied that from all the facts alledged in the Declaration the Plff was entitled to his action agt Defdt — That it was according to the course of the Court where such a plea was made it should be heard before going to the proof of any fact, because it in some measure admits all the facts alledged and may be considered as a Demurrer

to

to the declaration — That by the Rules of practice of the Court there was no particular form laid down for pleading such matters, and it was therefore sufficient if the plea contained such an allegation without taking any particular conclusion thereon, according to the practice & suggestion of Plff

—

Cadieux
&
Renaud

On Plff's mo. for hearing instanter on an Exception à la forme pleaded by Defendt —

O'Sullivan for Defendt — The Plff by moving for a hearing instanter on the exception, admits the truth of the facts therein stated — Now it is there stated, that there is no addition given to the Defendt in the Writ or Declaration which is fatal, and the exception must therefore be admitted — It is besides stated in the Exception, that the Defendt is a revendeur, which is no legal addition, as every man who resells any article must be considered as a revendeur, whereas the Defendt at the time of suing out the process was a trader, known by the designation of petit Marchand, and not a re-vendeur, which is no addition whatever —

Papineau for Plff — The Defendt is stiled Revendeur by the Deliit Clerk, & is sufficient, as this is a character well known to be a retailler of provisions & other small

articles

articles, qr. is tantamount to a petit marchand, and equally discriptive of the Condition of the Defendt.

Exception dismissed — The Court considering the addition given to the Defendt. and that contended for by him to be synonimous in law, and equally descriptive of a Trader, or person who buys to sell again —

Saturday 8th. June 1816.—

Deboisheu v Laurin } The Court considering that the issue between the parties had not been joined, no Replication being filed, dismissed both motions. —

The Plaintiff having filed his Replication now moved that the Cause sh.d be fixed for evidence on the 14th. inst.

Papineau for Defendt. contended, that having plead an exception in law as well as matters of fact he was entitled to a reply to the pleading thereto filed by Pltff.

Pltff and. That when law & fact are joined together in a plea, the party Dr. is not entitled to such answer —

Brace v Jones } Interlocutor ordering Arbitrators to proceed anew.

Monday 10th June. 1816.—

Deboisheu ⁊ Laurin } On Defendt mo. for hearing on Law. —

Stuart for Defendt — same objection as already made on 7th — refers to Pigeau as settling the form of the Exception —

Stone. ⁊ Patterson } On Defendt mo. for hearing on law. — Granted for to morrow

Wagner ⁊ Teasdale } On mo. for hearing instanter on Exceptions filed by Defendt —

Ogden for Defendt — There is ~~special matter~~ special matter in the answer and therefore Defendt is entitled to answer to it —

Stuart for Plff — There is no special matter alledged

Berichon ⁊ Marston } On mo. for hearing on law instanter —

Bruneau for Defendt — caution premature on part of it, as debt not due till May next. —

Exception dismissed —

McDonald v McLeod def

On affidavits touching sufficiency of service of Notice

Stuart for Pltff - no notice of giving security for Costs is necessary under the Rules of practice -

The Court held notice necessary, but were of opinion under the circumstance of notice given that Pltff ought be admitted to bring up his Security to morrow -

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Dom. Rex v Sanguinet & Sanguinet mis en cause -

On Rule to shew cause why Indt of Court of appeals ought not be cancelled upon by appointment of a Surveyor &c

Sullivan for mis en Cause - says - there is nothing to shew that the mis en Cause are the regular representatives of the late Chs Sanguinet. -

Stuart of Counsel for mis en Cause, contends that Mr Ross, who was the counsel for the Defendt can be admitted to sue out this Rule as the s. mis en Cause - The Rule for proceedings is premature - first point was put the parties into Suit, and move for proceedings afterwards -

Ross for King - admits that he was atty of late Chs. Sanguinet but when Indt was ordered he considered his duty to be at an end wt regard of the s. Defendt -

The King
M'Cord & ab

On Certiorari — from Conviction of one Regis Raccot for selling Spiritious liquors without licence —

Nyé for Defendt contended that there was no kind of proof to support the Conviction —

Johnson
Pltf.
Hutchins
Deft.
Jun. J.

action by Pltff as sup. for an exhibition of title & pay arrears of rent —

Gale for Pltff — admitted by parties that Defendt is in possession of only 4 lots instead of 5 — There has been an Intentions admitting Pltff to make proof of his demand, q. he has done — When the original deed is lost or cannot be found — Party can make proof of the general rents &c. in the Seigniory — cites authorities —

Beaubien for Defendt — Pltff not entitled to Lods & Ventes they were due to the person who was Seigr. at the time they became due that is prior to 1808 when Pltff purchased the Estate — The title of Defendt shews that Cens at most could be but 1/4 of 40 acres — q. must stand good as. the Grantor, altho' the convention that there shd be no Cens may be illegal — but the quantum of Cens is what the Seigr could demand to 1/4 for 40 acres, —

See Pruch. p 184.5 as to arrears claimed by Pltff due before his purchase

Gale for Pltff — The stipulation to pay 1/4 for every 40 arpents was so.^d to be without being considered as Cens to carry Lods & Ventes, & therefore cannot be used as an Estimate of Cens — the deed therefore is wholly void — By 73^d. art. Cout^me Deft. bound to exhibit whole chain of titles as well of his Predecessors as that to himself — there must be an Interl. in case of John S. Hutchens similar to that in Ph^s. Hutchens case —

Lacombe v. Raymond } action to recover possession of a house with rent due thereon —

Hearing on Exception

Rolland for Defend^t — Declaration is insuff^t — no certain description of the property in question —

Mich^l. M^cDonald v. M^cLeod & ux — On Defend^ts mo. to reject a part of pleads — filed by Pltff, being a general demurrer to the Defend^ts plea and afterwards destroys effect thereof by answering to the Plea — the general demurrer in question not containing special grounds thereof —

Stuart for Pltff — The plea contains a demurrer to the Defd^ts plea — & as by benefits of laws of Canada, he also contests the fact Rule of Practice as to Special reasons, does not apply to answer to Exceptions — or a demurrer to a Plea —

Ross for Defd. opens to case. Hunter v. Woolrich
Febry. 1811 —

Spatz. —
v
Hunter

On mo. that Defd. be held to change conclusions of Plea —

Stuart for Defts. Parties are traders —

Castonguay
v
Castonguay

On mo. by Defts. for hearing on merits —

Ross for Pltff. cause must be first set down for examination of Witss —

Beaubien for Defts. The Pltff has op. the Defendt on facts Lard. & is too late to obtain a day for proof —

Delisle
v
Portclaire
Exors —

action to compel Defendt to render an acct. of the Estate of the late John Delisle —

Rolland for Defendt — The property in the money demanded by Pltff. is vested in the Exors, as a fidei-commis, during the life time of Radegonde Berthelet — She could not make a cession of the alimentary allowance made to her by the will to the Pltff. This is but an annual sum to be pd. to her

over

over which she has no control but as it becomes due—
3d It is not ascertained whether Mad. Delisle may not have other Children besides the Plffs—, and besides—it is only the children alive at the time of her death who are entitled to claim the ~~portion~~ principal sum—

Beaubien for Plff— The Testator has made no fidei commis to the Exors as it contains no liberality to them—cite Dec. Ferrier. vo Fidei commis— The disposition of Mad. Delisle has made of the annuity is not a Sale or alienation thereof but agreeable to the intentions of the Testator by giving it to her Children— That Substitution is open completely by the Party giving up her right—

Poth. Traité. Dist. Sect. Sec. 6 art. 1. §. 2. art. 2.

That from age of Mad. Berthelet the Plffs. are the only children of her mar. w. ~~the~~ her present husband who can claim the benefit of the Legacy— By making this advantage to Mad. Delisle, she has not been deprived of exercising her legal right thereon, she may give it up, more especially to those who are alone interested thereon—

M'Intire & al' vs M'Donell } action of account—

Sullivan for Defdt— action is bot. by same of parties by D. Ross their atty. 9t is irregular— The Residence of the Parties not set-out—

Tuesday 11th June 1816.

Wagener v. Teasdale } The Defendt mo. for taking off the pleading or demurrer filed by Pltff to Defendts Exception, as it was not inscribed on list of Exhibits — and Pltff's mo. for hearing instanter on the exception filed by Defendt —

Dom Rex v. McCord Lal } Rule absolute for a mandamus —

Deboisheu v. Laurin. } Mo. for hearing on law granted —

Lacombe v. Raymond } Exception maintained. — as a discription of the house & lot. —

McIntires. — v. McDonald. } action dismissed, as residence of Defendt was not described —

Mathieu. v. Content. } Action dismissed

Castonguay v. Castonguay } Mo. rejected, as the Cause had not been previously fixed for evidence —

Richer
v.
Bissonette } on report of Practicien — nothg said —

Wednesday 12th June 1816.

Spatz
v.
Huntoon } Mo. dismissed.

The King
v.
Mc Cord Lab
Justices
5. J. Rep. 251. } On certiorari — Certiorari granted —

See King v. Reason 6. T. R. 375 } Williams abridt —
5 do 251 }
Tomlins Dgst of Cases K.B
vo Certiorari —

The Court cannot judge of the facts nor the force of the evidence before the Justices, when they have drawn a right conclusion upon presumptive evidence before them —

Wagner
v.
Teasdale } The Plea of Excep. rejected — on principle that altho the Defendt alledges he is not a trader, that is not sufficient, as he ought to have set out what his profession was so that Pltff might have a better action — & this altho the Pltff by moving for a hearing instanter is by the rules of practice presumed to admit the fact stated that the Defendt was not a Trader, yet this admission when the pleads is insufficient, will not make it good. so as to

McDonald
McLeod — The mo.te reject the Plff's demurrer to the Plea of Exception over-ruled, as the stating special reasons are not required except in pleas, & not in answers to Pleas —

Lacombe
vs
Raymond

Bingham
Thayer — Arr mo. for hearg ex parte for want of a Plea —

Rolland for Defdt. The Defendt is sued in action of assumpsit upon different Counts, on note of hand for goods sold, & the money Counts — & no notice filed as required by the rules of practice of the specific amount for which the Plff's demand was made —

Ross for Plff, action on a promissy. note for a small sum for goods sold — Defend. ought to answer, as no notice necessary especially on note of hand —

Mo. dismissed — Plff has joined demands together by a general conclusion — was bound from nature of action to give notice —

Grant
vs
Boisbois
dal — Action for negligent carriage of goods —

Ross for Defendt — Plff not entitled to recover aft Defts for all the loss of the articles —

Gerrard
v.
St. Dizier
Cur' —— } action on Promissory Note. —
Case submitted by Defendt. —

Mc.Intire et al.
v.
Mc.donald } On mo. to amend on payt. of costs. —
Sullivan for Deft. — This action is now in délibéré on the very question touching wh. he applies to amend.
The application to amend the Declaration will not entitle him to amend the writ —

Lacombe
v.
Raymond } On similar motion to amend. — ×.
Rolland for Defendt. — No Amendment can be made, as it will tend to make a new Declaration, & give Jurisdiction where none existed before —

Dorions
v.
Clément } action on Obligation — on condition to be pd. according to the quantity of goods sold — The faits & art. on Deft. shews quantity of goods sold & on qt. Pltff. asks Judgt. —
Beaubien for Defendt. The Defendt. says in his answers to the faits & articles that he has made & furnished & provided certain articles for Pltff, the amt. of qt. ought to be deducted from the demand but as this amount is not ascertained, a day shd. be given to prove it.

Friday 14th June 1816.

Witness-Day.

Saturday 15 June. Witness day —

~~Saturday~~ Monday 17th June 1816.

Girard vs Rouleau — On Defend.^t mo. for hear.^g on 17th —
Pl.ff moved for a new Com. Rog.^n — That — Com. was sued out the 9th April 1816 returnable on the 16 — the Com. was ~~returned~~ now produced with the Att.y's letter stating that on 12th Ap. last the Officers were too busy to execute it — but no application or diligence done since — The Court were therefore of opinion that Pl.ff had not done suff.^t diligence & granted Def.^ts motion —

Griffin & ux. vs Fraser & al. — Exceptions dismissed — as pleaded by Mr. Langan Maintain the Excep. pleaded by Leslie, but adjudge him to pay Costs up to time of filing the Exception —

De Beaujeu vs Girardeau — The Court refused to Pl.ff the charges of a copy of a deed, on an action ag.^t Defend.^t for Seigneurial rights —

Lacombe & Raymond } Mo. to amend granted &c

M.Intire. M.Donald } Mo. to amend granted —

M.Donald. M.Kenzie } The Defendr mo. to enter a common appee rejected, heard 3.—

Mathieu. Berthelet } Action of separation —
Stuart for Defendr — Parties have lived many years together & raised a family — action ought not to be favorably received — no sevices proved — only words — not sufft considering the condition of the parties. —

Turgeon Ratelle } On action of voie de fait —
Viger was heard for Defdr —

Dubois Laurin — } On action for refusing to grant Plff a certificate to enable him to keep a Tavern
On Exception filed by Defendr —

St. 35. Geo. 3.

Papineau for Defend^t — The law respects the granting of Certificates is not imperative on the Defd^t — There is a discretion vested in the Marguillier as to grants such Certificates — he is not bound to give his reasons for refusg such certificate — There is no law that says there shall be one or more taverns in every parish — & that the Marguillr shall be bound to give such Certificate in order to give — operation to the law — as a Loi publique — what it been so the Defend^t — as a public Officer wd have been held to give such certificat — But as there are other marguilliers in the parish, it was necessary that the Pltff shd have stated that the other Marguilliers refused to grant — The Pltff ought not to be admitted to prove his allegation of the malicious refusal of Defend^t — as such refusal does not imply malice, where was no obligation on him to perform.

Stuart for Pltff — Evidence was first necessary from the nature of the facts stated in the declaration — This is an action for non-feazance — refus to Com. Dgs. — or mis-feazance — not complying with the obligations of law — The Defend^t in his capacity must by law be considered as a public Officer quoad this point — It was necessary that the power of grants certificates shd be vested in some person or body of persons, who thereby became charged wt. the execution of the law, & bound to that execution — otherwise

the

the law would be a nullity — If a discretion be given to the marguilliers in this respect, it must be exercised with due correctness & on sound principles — The facts are that Defd has not exercised this discretion — The Defd as a marguillier en charge is bound in a more particular manner than any of the other marguilliers, —

Papineau in reply — Plff ought to have shewn that the other marguilliers had refused — The law not imposing the oblign on Defd — it cannot be imposed by this Court, who cannot alter the law — There may be reasons why Defd had for not granting his certificate, why it would be improper for him to disclose —

J. Wilson

Debartche
vs
Duvert

action for recovery of Lods & Ventes —

Rolland for Plff — The proof made by the Defd ought not to affect the right of the Plff, as there ought to have been a Judt rescinding the acte for Lezion between the parties to discharge them from the Lods & Ventes — There is a difference, where there is lezion in the acte, and where the apparent cause of rescision is not lezion, — There is no such allegation to ground the rescision of the present acte — It is

a principle that every acte of mutation carries Lods & Ventes unless there be an apparent cause on the face to discharge the acte therefrom —

Dumoulin Tit. 1. De, Fief. p. 389- 391. from Nº 18 to Nº 30.

O'Sullivan for Defdt.— It was not necessary that there should have been a Judt of rescision of the acte to bar the Pltff of his right, nor cd such Judt have done so if the fact had been otherwise or the Judt given by collusion to the prejudice of the Pltff —

Rolland in reply— The acte is an acte de Vente, altho' it may operate between the parties as a partage, yet as to third persons it must be considered in its true light of a deed of Sale — Refers to 112th art. of Cout. D'Orleans as most favorable authority to Defdt — even accords to pr. the acte must be rescinded for the very same price, & that this price had not been paid — but how it appears the consideration for the sale & the rescision are not the same as part of the property appears to have been severed from that whole before the Sale in question —

Cites Cout. Vente. Nº 322.

McCrae. Prohibn. Goods Loyd. claimt

On claim of Lloyd —

Stuart for Claimt — Not stated that the property became forfeited by pr. only Judt can be made — Information therefor irregular — Grounds of forfeiture laid, not according to fact — The extra number of keys not entered, not liable to forfeiture

See O

Pagé v Guerin } On action of trespass for cutting wood on Pl^ffs Land —

Beaubien for Dfd^ts no damages proved within the cognizance of this Court — Of the 4 Oak trees proved to have been cut, only one of them is on the land of Pagé ~~per~~ No. 525 — & only one Wits — In No. 526 — only 3 trees cut, value 18 dollars —

Mc Crae v Proh^d Goods & Lloyd claim^t } Ross for Prosec — The lybel is sufficient & proof also

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Mc Crae v 26 Keg^s Tobacco & Lumsden claimt } On claim of Lumsden —
Stuart for Claim^t — Inform^n irregular as to statement of Province of L. Canada — omission also, as to grounds laid for forfeiture — The seizure here premature as no evasion was intended —

Ross for Inform^t — states that the Inform^n is sufficient and facts sufficient to warrant condemnation —

Fraser v Forbes & al } Action ~~of~~ assumps^t. on Promissory Note —
Bedard for Dfd^ts for John Forbes Jun^r. The Dfd^ts have renounced to the succession of their son and no proof made of interference —

Hagar et al. v. Conefroy } action for monies rec^d. by late Le Chaboiller

On demurrer to Plea —

Stuart for Pltff — Plea does not answer decl^n.
The Defend^t has pleaded nil dit. without answering the assumpsit charged to have been made by the late Chaboiller
The statement in this plea, (q^t is to the merits of the action) that the Def^t. was not Commune or Intrig, is insuff^t. & ought to have been stated by Exception —

Quesnel for Defend^t — The Plea is a general denegation of the Plaintiff's action —

Charles v. Wilson } On award — nothing said. —

Huot v. Kuper } action of Trespass & Damage for injury to a meadow

Ross for Def^t. Not stated that Pltff was troubled in the poss^n. of his property — Facts proved after date of Declaration — The meadow was overflowed & Defend^t had a right to use the space proved as a gangway, q^t must always be left free for the navigation of all Rivers —

Stuart in reply — The River in its natural state only admits of a beach or greve upon q^t the free commun^n is given to the Public — but when the water cover the private property this does not hold —

Charles
vs
Baynes
&
E contra

On Report of arbitrators —

Sewell for Defr — No evidence to warrant the opinion of Experts — Ogilvie the Wrt. for Plff was named by him as Expert, yt — is irregular —

Stuart in reply — The objection too late. —

Tuesday 18th June. 1816. —

Reynolds
vs
Palmer &al
&
Hunter Garnishee

action on Promissy Note —

Boston for Defr — The note produced is not a promissy note, but an understanding to furnish a man — The Defrs are not jointly & severally bound, & therefore there ought to have been two actions in the Inferior Court —

Ogden for Plff, Defrs are in demeure & must be condemned to pay the money —

Pothier, Exr
vs
Foucher &al

Action by Plff to enforce the Execution of a Testament —

Lacroix for Foucher — The action is irregular, it is in name of complaints — It is ag^t Defd^r as Tutor — but the conclusions thereof are ag^t him personaley — The Pltff in the Cause assumes no kind of title or capacity in ag^t he makes his demand — Arts. 297 Cy. C. p. 281. The Ex^tr from the moment the will comes to his kn. ought to do diligence — Pltff has not done so — The will of demand being fulfilled the Pltff has no right to Ex^te Bonn. 375. 2. Pigeau. 292. —

Beaubien for same Defd^r — Defd^r. sued as Tutor, but acts complained of are his personal acts & the conclusions are ag^t him personaley, & he is not sued in his own proper person — There is another person named in the will as Administrator who has not joined in the action, & ag^t cannot therefore be supported — The action cannot be divided so as to give Pltff his proportion — The time for Ex^te the will has lapsed by having been executed by the heirs, & therefore he cannot support any action to be put in possession of property to that effect — The heirs are the persons vested by law & the Ex^tr cannot demand any thing from them if the will be executed, nor more than is ought to execute it, if that were not already done — He asks even for immoveable property of ag^t he cannot obtain — Bonn. 375 —

Refers further observations to his note, ag^t he produced

Brigé — Exceptions on 2 points 1.to claim of Pltff as Extx, & 2.o as Administx. — There is another person named as Extx & Admnx, Henry — who has renounced to the execution, but not to the Admnx — That one Et. Maynard, an heir, so admitting by Pltff, has not been put in suit — The will gives Pltff only a partial Administration, but Pltff asks the admn of the whole — The will has never been prov.d the will, therefore the action ought to have been to obtain the validity of it declared and then conclude for the extn of it — The Pltff has not taken the legal course to obtain the proof of the will. The legacies are p.d & therefore the Extx has no right of action. — The Pltff assumes the character of Admtrix, q.h is not known by the Laws of the Country — a Testator could not have created such a character — Nous. Demdt. Vc Extx. — The Pltff asks for an exclusion of Defends from the succession by reason of their contesting it — q.t can be granted, if legal, only to the heirs. — That all the heirs have entered into a Transaction together q.t must exclude the Pltff from the present action —

Rolland for Baron devise, two of Defends admit right of Pltff as Extx. Vo Execution Testre No 5 — The power of Extx may be limited or extended — The Extx here is charged w.th payt of debts, q.h cannot be known till the Inventy be made — The expenditure is legal — 2 Bouj. Inst. p. 5.e — ch: 3.

That the Testator by being in poss. of diff.t Successions had a right to dispose thereof, admitting even they did not belong to him, & the exon of the Testament ought immediately to be executed, this will not prejudice the rights of the heirs—

The further argument cont.d to 2.d day of next Term—

McDonald v. McLeod } An Exception pleaded by Defend.t—

Ross for Def.t the Pltff has not stated himself to be resident at his true domicile—

Sewell for Def.t— refers to Code Civile—& Pigeau—
Tit. 2. Des ajournements— 1 Pigeau 159. 160 — D.o — p. 132.
1 Tidd. p. 581. 2. —

Stuart in answer— the law applies only to designation of Defend.ts cites 1 Chitty. 246

Vredon
vs
Langevin
& al' —

Action of trespass in entering Plff's house & turning him & family out of doors —

Ross for Defend'— action wt. out foundation — moves for rejection of deposition of Marie Vredon, the Plff's daughter —

Burton
vs
Mills & al

On Rule to shew Cause why Inst. sh'd not be entered in this Cause conformably to the Consent of the parties in another Cause

Rolland for Plff, contends that all the evidence given in the other Cause should be put on the record before granting the Rule —

Griffin & ux
vs
Campbell

Action for rent on Bail Emphyteotique — On Defend's mo. that he may be admitted to desaisir in order to be liberated from the Plff's action — and also on the merits —

Stuart for Defr. Deed of lease insufft — being in the name of wife of Plff alone — cites. Rep. v° Emphyteose p. 682. —

Fraser v. Williams } action on promissory Note —

Grant for Defendt — action premature — as it was founded valid only on a Settlement of accts between the parties, wch has not yet been done —

Dumont v. Jordan } action for Lods & Ventes —

Nothg said —

Mc Cord v. Ferries } action for arrears of rente foncière —

Rolland for Pltff — Poth. Bail a Rente No 54 —

Sewell for Defendt — the rente is due on the fond & not by the person — & Pltff. action ought to be agt the Detenteur — Loyseau — des Rentes — Objects to letter filed by Pltff, as irregular — Defendt. sold the property to one Woodard & the presumption was that it was delivered to him — a Symbolical tradition in this case being sufft. Cont. Vente. No 314 —

Rolland in reply — a tradition feinte does not make a man Detenteur of the property —

Burton
vs
Sallis Jr

action Petitoire —

Gale for Defendt — says, that he is not in possn of the Land — but one Danl Sallis, Senr — & therefore action ought to be dismissed —

Rolland for Pltff — The proof shews that Defendt. is in possession. —

Aylwin
vs
Cuvillier

action on a Judgt transported by Jones & White to Pltff. —

Rolland for Pltff, on Defendts mo. to declare the facts last. proposed to Pltff for reconnois — objects, that the Com. Rog. was not issued in this Cause — title different in the Com. to that in Cause — There is no addition to name of Defendt — There is no return day in the Writ — The return of the Commissioners not under Seal. No power given to the Com. to sworn the Wt who served the Interrogatories on the Pltff —

Beaubien for Defts — The Pltff changed his residence during the proceedings of the Cause — objections taken to sealing ought to be taken before publication — & therefore the facts & articles ought to be declared avérés & confessés

The Judgt was rendered aft. Cuvillier, Aylwin & Harkness at Quebec, at time that Cuvillier was resident at Montreal, and the parties ceased to be partners in consequence of their partnership in trade. —

Rolland in reply — The Judgt in question was given at time that Cuvillier Aylwin & Harkness were Partners as stated on face of Judgt — and no proof that it was dissolved — The deed of Cession made by Cuvillier & others to their Creditors altho' prior to the Judgt — yet does not mention the firm under wh the ~~business~~ business was carried on at Quebec.

Marot
vs
Monplaisir

} action for arrears of Rents & pension
On Pltff's mo. for a Judt provisoire
for £20 —.

Stuart for Defendt. The Defendt owe nothing to Pltff, and there is nothing to shew that Pltff is entitled to any provisional allowance — not can of a father & Children, a ~~widow~~ husband when such provisional allowance is granted —

Berthelot
Berthelot

action Pétitoire. —

Stuart for Pltff — states nature of action —

Bourré for Defts — The property in question was conveyed by a Deed of Donation from Pltff to Defendrs In Bte The Donation was accepted by one of Defendrs who was Major, as well for himself as se faisant fort for his brother then a Minor — This was sufficient, as to the parties to the act, and the Pltff cannot come agt. his own act — Fr. Merlin p. 510. — 2 Bourg. 120. Lacombe. Vo Donation — Pothier. tr. Don. entre Vifs. p. 55. 56. 12e — The Don. was ratified by B. Berthelot after he came of age in Janv. last — before any revocation on part of Pltff — The present action was commenced, but it cannot be considered as a Revocation — Argou. Don. liv. ch. 11. —

Stuart for Pltff — In cases of Donation, acception is absolutely necessary — Repo Vo acceptation de Donation. Poth. Tr. Don. entre Vifs. p. 24. 12e p. 61. — The Pltff was not Tutor to the Defendr and as father was not liable to any action of damages for his not effecting the validity of the Donation — Poth. p. 55. —

That the Donation is so made, that if invalid as to the Minor, it must be so also for the Major, being made to them jointly. — That was no acceptation until Janv. 1816 & it is only then the act had rec. its perfection. Poth. 57

The present action was sued out in 1815 prior to the said acceptation & signified to Defend. which was tantamount to a revocation, & prevented the acceptation from being valid. — The act at the time required no rescision, it was at the time of suing out Process, an imperfect act on the face of it —

Bourré in reply — The Minor may at any time during the lifetime of the Donor accept the Donation, and this could be done by Defd. in Jany 1816 as the present action cannot be considered as a Revocation, the validity of the Donation never have been called in question until the Replication filed by Plff to the Defendants Plea — The Donation may be good for Jn Bte altho' not so for Benje as the property given to each is separate & distinct — Cited Bedequin. & Audubon. when obje. to validity of Donation on an act rescind was not rec. the Court being of opinion that party ought to proceed to a direct action to rescind the deed —

Bricault
vs
Bricault

On report of Experts —

Grant for Defdt. First report made after the expiration of the Rule, & the second report made without making any new visit or hears parties anew —

Biddlestone
vs
Van Allen

on Report of arbitrators —
Scoble for Pltff — The Report is incorrect & cannot be confirmed.

Chaboiller
vs
Chartier

on action for money advanced on contract to Defendt —
Pltff by Mr Quesnel prays Judt —

Bent
vs
Marston

Action for boards sold to Defdt
Defendt says that one Wtss is interested & other is son of Pltff

Boudrias
vs
Sarazin

Action for house Rent
Noths said

Wednesday 19th June 1816.

Tavernier
v
Sylvain

Action dismissed, the Court considering that the Partnership being dissolved the Service of Process on one Partner not being suffe to bind the pre-existing Partnership.—

Sylvain
v
Cuvillier

No 849.

Same Case —

The King
v
Sanguinet

Rule absolute — order that a Surveyor be named till to morrow.

Roi.
v
Allard.

Judgt for £6.5. costs as in the Inferior Court —

Debartche
v
Duvert.

Action dismissed.— The Legion being proved —

Deboisheu
v
Laurin

Action dismissed — 3 Wilson. 121.

Grant
v
M'Intosh

On question whether Arbitrators can be authorised to examine either of the parties on oath —

Commercial Case

Prairie v. Shepherd	On Pltff – mo: to revive & prolong rule of Reference Objected by Deft. That it cannot be done without his consent – & he refuses –

Thursday 20th June 1816. . . .

McCrae v. Prohib. Goods & claimt	Judgt – adjudging articles forfeited
McCrae v. 40 Kegs Tobacco & claimt	Same Judgt –
McCord v. Ferris –	Judgt for Pltff – The mere executn. deed of Sale by Defendt. to another person, without any proof of tradition, not suff.t to exonerate Deft –
Hagardat v. Confroy –	The Plea rejected, as not sufficiently ansg the declaration, as regards the assumpsits charged to have been made by the late L. Cuthbertz, the husband of Defendt –
Reynolds v. Palmer & Garnishee	Judgt for amount of Note, the object, of payable in a likely mare – not allowed by the

4

the Defend^{t} — as the day of payment had lapsed

Marot. — vs Monplaisir & } Judg^{t}. Provisionnel — upon Pl^{ff} giving security to restore — The only difficulty of — arose was from the nature of Lease, as Def^{ds} pleaded payment, & the relation between the parties not such as to create a natural obligation — but seeing that Pl^{ff} had parted w^{t} his property in order to obtain a means of subsistence —

Biddleston vs Vanalan. } The report sent back to the Arbitrators to correct the names of the parties, wrong stated in their report —

Burton vs Sills-Junr } The error of add^{s}. Junr. to Def^{nt}. name cannot be taken advantage of — on merits, when he app^{d}. to be the person in possession of the property, & who rec^{d}. the process & app^{d}. in this Cause — & he ought to taken advantage of such Defect by Except^{n} of mis-nomer —

Vrooun. vs Langevin. } Judg^{t}. for Pl^{ff} — damages

Hunt
vs
Kupser

Judt for £2.— damages, but dismissing the action as to the possessory conclusions— as not forming a regular conclusion in an action of this kind —

Mr Stuart rose to be heard upon this point as not in argument on the hearing — but it was over-ruled —

—

Mr Donald
vs
McKenzie

The Exception dismissed, as it was sufficient that the Pltff was resident at Montreal at the time of suing out the Writ, on Rule of Prac. in case of Fiat, ~~stated~~ in

my Pltff's affidavit to hold to bail

—

Charles
vs
Baynes

The objection as to Expert named by Pltff over-ruled, as it was not taken in time, Report home. —

Fraser
vs
Williams

The Court on a plea of non-assumpsit will not admit the Defendt to prove that the Promissy. Note was given conditionally

—

Burton
vs
Wilson
Sal'

The Court gave an Interlocr ordering parties to file copies of evidence adduced in other Causes —

Auclaire
v.
Dorions

Judgt. for one half of the maintenance provided for the bastard child —

Chaboillez
v.
Chartier —

Judgt. for £20 a — damages. —

Irvine et al'
v.
Forbes
&
Gerrard
Garnishee

Mo. for a com. Rog. granted, altho' after the 4 days in Qst — the Plff moved to contest the declaration of the Garnishee, the Court considering that the Rule did not in this case apply. —

M.Kenzie
v.
M.Gillivray
et al

The Plffs moved for the ex. of Wt on 20 Sept. next. —
The Defendts oppos. the motion & produced a letter from the Plff, stating that the had settled the cause with the Defendts

October Term 1816.—

Tuesday 1st October 1816.

Cormier
Cormier
& Carlin Intervs

On Defendrs mo. that Pltff. shd. name another Practicien instead of Mr Henri.

To our last order in the Cause—

Wednesday 2d Octr. 1816.—

Delagrave
vs
Monjeon

On Defendrs mo. to rescind the order made by the Court in this cause yesterday on the Pltffs mo. for a continuance of the enquete to the 14th. inst.—

on the ground that he had no notice of the Pltffs motion, & that the cause was made in Court yesterday in his absence, & further that during the last vacation the Pltff did not proceed to ex. his witnesses under the order obtd. by him for that purpose— And it appears that the Pltff was not in default in the vacation, the Defdrs mo. was rejected

Kerp
vs
Perkins

On Defend^{t} mo. to set aside attach^{t} sued out by Pltff at instt of Defend^{t}—

Sullivan for Defd^{t}— The words of Statute not sworn to, — requisite that Pltff shd swear that Defend^{t} clothe absconds, but it is s^{t}. only, that he is about to abscond — The original debt only £14 — Pltff bot another note to sue out the attach^{t} — therefore the interpretation of the law ought to be rigorous ——

Mr Boston for Pltff. contends that affidavit is sufficient —

Young dal'
vs
Pincourneau
dal' —

On Defend^{t} mo. to quash process as not served at the domicile of Defend^{t} — and then being no addition to Defend^{t} name —

Boston for Pltff — admits that parties must go to proof as to service of process — The addition of gentleman is known — but must translated into french as there was no word assimilable in that language —

Thursday 3d. October 1816.—

Boudrian
v
Gravelle

On Defendr motion to fyle a certain writ of Summons & Declaration in the Inferior Court on a Suit instituted by the Defendr ag.st the Pltff subsequent to the institution of the present action —

The Court were of opinion that as this was to be used as matter of evidence in the Cause, offered subsequent to the Enquête, it could not be admitted. —

Young
v
Simmons
&
al

Order for proof touching the service of the process. —

Heaps
vs
Perkins.

Bridge & Pen
v
Bryden

On Pltff. mo. to reject a pleads filed by Defendr as regarding the regularity of the process & service thereof the same not being proper to be made by motion —

Mr Bowen for Defdt — contends that Plea is regularly made & containing a plea of Escap — à la forme & of mis nomer —

Pothier, Exr
vs
Foucher et al

Argt. continued from 18 June 1816—

Bedard for Plff. The time lapsed between the time of death of Testator & 9th Month of April ought not to be counted — owing to the obstacles raised by Defendrs — Concludes, that dispositions of the will be executed according to the conclusions of his declaration —

Lacroix, for Foucher as Tutor — The action cannot be maintained as the Defdt, who is prosecuted as Tutor — & the conclusions are as him personally — 2dly — The Plff has not a sufficient title or authority to institute the action — The Plff not above Exr — Caire, is joined w[ith] him — If Henry has renounced to the Executorship he has not to that of administrator — The only action w[hich] remains is that of account as the heirs, as the will of the Testator has been executed — One of the heirs is not before the Court — one Maynard who married a grand Child of the Testator has not been summoned

Beaubien of Counsel for Foucher — Conclusions cannot be granted — The will has been executed by the payt of the legacies, & therefore the Plff not entitled to the possession of the property —

Vigé for Henry & Marie Julie Fortier — The action is brot by Pluff as Exr & Admtrix, also qualities qr cannot be joined — he sues also as sole Exr & Admtrix qr is not the case by the will as Henry is joined w[ith] him — It is stated by Pluff that Mary and his wife are heirs, yet not in the Cause — There can be no room for the Saisine or possession of the property of Testator claimed by the Exr, as the will has been opposed by the heirs — Conclusion for damages irregular, as Pluff cannot have them to his own use but warranted to apply them for the use of others — the same as to the expenditure of any of the heirs —

Supposing the action to stand, yet the disposition of the will cannot be enforced, as the Testator had not the power over much of the property he bequeathed the same belonging to his Children independantly of the will

Mr. Pasmeau for Mr. & Mrs Vigé — The Testator could not appoint an administrator of his property, such character not being known by the laws of the Country — The will not an authentic act, not proved by regular Court the dépot of it being null — Therefore Pluff cannot claim any thing under it, either a right of Saisine, or administration of the Estate of the Testator — 2 Vol. Fer. Comb. 18e 261 —

Mr Rolland for Mr & Mrs Baron — contends that the will of the Testator ought to be executed — Depot of a will holographe not necessary at the greffe to render it valid — Bourj. 5. p. Testamens Ch. 2. No. 1 — Denizt. vo. Testament. No. 46 —

The Testator had a right to impose any Conditions to the legacies he made by his will —

The Exr is interested in the Succession till the Inventory is made — N. Denizt. vo. Exr Testamr —

Stuart in answer — The only exceptions in law pleaded by Defendt are insufficient to bar the action —

Bedard in answer — do —

Friday 4th October 1816.

Bridge & Pen v. Bryden — Pltff. mo. granted. —

Bridge v. Leclair — The Court gave a Judgt. for the Costs on a discontinuance entered by Pltff in vacation —

Lacombe
vs
Raymond

On Defts mo. to quash proces for want of sufficient servis, the necessary delay not have been allowed —

Cantin dit
vs
Leonard
&
Leonard
Etux —

action of account of the Succession of a deceased person —

Stuart — cites. Rep.x. Vo Compte — no receipt for rents in a suc. without an act not valid — therefore the receipts produced by Defend. cannot exonerate them from rendering an act. as demanded

Rolland for Defend. & Incd. Plff — The Plffs demand an act. of the succession of the Gr. father & Gr. mother of Plff — but they neither allege nor shew that the Defends were in the possession of those successions or were the heirs of the grandfr & Grand- mother — What the Defts rec. from those suc. they paid over — The Defends. amounted w. plff, — refer to the statement at the foot of the Inventory filed — The Plff Cantin — sues as tutor natural — but has made no proof — his demand must fail — as to the Receipts of Lippé — some fraud must be shewn of them before they can be rejected — the party cannot be rec. to come of his own act

set without alledging some cause ag^t it, suff^t to set it aside — refer to Rep^e. V^o Rescision. p 329.
One of Pltff^s. Heter claims as usufructer of the property
171 of his wife under a Don Mutuel in his marriage Contract — but this is not insinuated & therefore null — Poth. Don. mut. N^o. 171.

Mond^l. Demand, for rescision of a deed of Sale by Deft^s. to Heter of Deft^s. rights in the succession of his daughter who was the wife of Heter — from cause of Lesion — Rep. V^e Droits successif. It. V^o Lesion. — The parties were Copartageans Poth. Vente. 643-4. Obl. N^o. 35 — 2. Boug^n 603 N^o 122. 123. & 143 — There was also fraud in this Sale as Heter stated himself to be usufructer of his wife, which was not true, as the Contract of marriage was not insinuated, & therefore not suff^t. —

Stuart in answer — There was no suff^t. account given by Defend^t. to his Children previous to the receipts produced by him — The statement at the foot of the Inventory, is no account

Pilon vs. Davis — Davis.

action for arrears of rente viagere.—

Lacroix for Defd. Not bound to carry the articles out of the parish — articles due except 3 cords of wood & about 500 lbs.

—

Hicks vs. Carter

On Defds. mo. to quash proceedings for want of having filed a power of attys. warrants the bringing the action — according to rule of Prac.

Sewell for Pltff — Pltff cannot be put out of Court for not having filed the power of attys —, as a day may be given to file it by the Court, or the Defd. may proceed to Judgt. There is besides a sufficient authority to prosecute this action by the affidavit sworn to by him on suing out the attachment — Besides the power of attys may be in the hands of a third person & may be brot. up in rejoinder —

Ross in reply — The Pltff not being a resident was bound to have filed the power of attys required — The signing the affidt by the Pltff, an additional reason why such affidavit ought to have been filed, —

Wilson
" Cartier &
Franchere } action for assault —

On Cliff's mo. to amend the return of service by stating that the Defendant Franchere had not been summoned —

Rolland for Franchere — The Defendts have been both summoned. tho' one copy of process has been left with Cartier only, yet this was done for the purpose of summoning both the Defendts as stated in the return, & both have appeared, & Franchere has filed a plea — to allow the amendment would destroy this Plea without cause —

Saturday 5th October 1816. —

Arnoldi
" Brown } Mo. rejected —

Counselle
" Cantwell } Do — Saisie Gagerie —

Wilson
" Cartier, &
Franchere } Do —

Pothier
Mathe

Ou action for making a party fence between parties & for arrears of Rente Constituée. —

Hearing on Exceptions pleaded by Defr

Nigen. Offre made of arrears — The Plff asks for a party wall, of Stone & mortar, & Defend. is not bound to make — in the Suburbs, it not being required either by the usages of the Country or the Contract between the parties —

Bedard in answer — notwithstanding the tender, the Defend. has contested the demand of Plff. & therefore it cannot avail him, as he ought in consequence of that Contest to be adjudged to pay the costs — By the 209th art. of the Custom of Paris, a Stone fence ought to be made in every town & Suburbs — this forms part of the law of the Country by the Ordr. of 1663 establishg the Conseil Superieur in the Country. —

art. 209. No. 3. & 4

Godet. on art. 209.

Poth. Rente No 284. Intent of Price due —

1 Bourj. liv. 3. tit. 4. ch. p. 477-8 —

—

Savary
& Meunier

Action of Seduction —

Nigon for Defr. The Defend. was the Engagé of the Plff. at the time of the offence charged, & therefore bound

to

to watch over the moral conduct of the Defendt, & cannot have an action for seduction agt him — Fer. Vo Turpitude — Poth. Obl. No. 43 — Rep. Droit d'Antoine. Rep. 134 — Denizt. Vo Delit. No. 16

Bedard for Pltff — denies the fact stated by Deft says this can be enquired of only on trial of merits —

Monday 7th October 1816.

Pennel
vs
Bouqret
&
Loisel Inter.

On Pltff. mo. to fyle a certain affidavit in the Cause —

Tuesday 8th October. 1816.

(Witness-day)

Wednesday 9th October 1816.

Munn v Johnson } On mo for Security for Costs – The Pltff, a Ship builder domiciliated in Montreal, goes to England on his business – Is he bound to give security for the Costs in prosecuts this action during his absence? –

Savary v Meunier } Interlocr – reserving to adjudge on the Exception till hearing on the merits –

Turgeon v Ratelle } Interlocr for a Surveyor to make a plan of local –

Delisle et al v Portelance et al. } Interlocr – to call in John Wm Delisle & wife as Interested & to have the act of cession made by them confirmed. –

Pothier v Mather } Interlocr admitting proof of usage as to manner of separating lots & emplacements in the Suburbs –

Hicks v Cartier } Action dismissed –

Pothier & Foucherault } Interlocᵒʳ — reserving to determine on Exception till hearing on merits. —

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Caillé & Bertrand } Interlocᵗ. ordering Matter to be put in Suit. —

Delisle. Phelan — } On action for rent of a Bench in the market place —

O'Sullivan for Defᵗ. — The Pltff us road Treasurer to institute any action for recovery of money in the Court — ~~St. 47. Geo. ch. 7. s. 16~~

Desrivieres for Pltff. The right of action is vested in the Road Treasurer by St. 47. Geo. ch. 7. sec. 16. —

Clement Malbœuf } On Evocation —

Bedard for Defᵗ. contends that the action comprehends future rights, as title may come in question —

Lacroix for Pltff. contends that the action is merely for a trespass & no title can come in question

Lacombe
v
Raymond

action of assumpsit — on Prom. Note, & for goods sold

Ross for Plff, moves that Defd. be held to join his conclusions, to the Court a Country, having by his plea concluded to both —

Rolland — The motion too late, as the Plff is too late to file a Replication — plea filed 4th & Rep. was due on 9th — The Rule even if made absolute cannot be carried into effect —

Ross in reply — mo. not too late — as Plea was irregularly filed — & therefore Plff not precluded by any delay to have it set aside with costs

—

No. A 90
Lacombe
v
Raymond
Sab —

On Rule to shew cause why Process shd not be quashed by reason of irregular Devise

On Plff. mo. why cause shd. not be set-down for hearg instanter on exception of Defd. to the Regularity of Process —

Rolland for Defd. objected that he shd have had notice of the mo. & another day for hearg —

M^c Intire et al
vs
M^c Donald

action to recover Estate —

Sullivan for Defts — There are two of the Plffs who sue by D. Ross - their Attz. which is irregular as only the Kings can do so — There are several of the Plffs whose place of residence is not set out - such as Montreal & Lachine, without stating where these places are situated 1. Pigeau. 78. —

Young —
vs
Pinsonneault

action of assumpsit.

Rolland for Defts. No addition to Defts — domt in French & the addition of Gentleman — no legal addition —

Thursday 10th Octobr 1816.

Clement & Malbouf — Evocation issued till issue joined between the parties.

Lacombe & Raymond — Defdt. avered to conclude to the Court

Mr Intire vs Mr Donald — Pltff. allowed to amend on paying costs

Young & Pinconneau — The Rule to show cause discharged, as Defdt. did not show what was his proper addition, at the time he obtained the Rule.

Legault & Leduc — on rule obtd by Defdt. to show cause, why rule for hearing shd not be discharged — 20th Novr 1812
Benoud for Dft — The Interlocutory for Survey in this Cause has not been complied with —
Hue it was averred that Pltff. shd

Vigé for Pltff — action for having cut down wood

on Plffs. land - The Defend. pleads that when the wood was cut is an Island which was conceded to him by the Seigr. - The Plffs. produce Exh. N-1 which grants a lot of land bounded in front by the River St Lawrence - being within specific boundaries but any certain quantity of land or number of acres - The question is, whether the land claimed by Defdt be an Island, a part of the Plffs. land - By rule of Reference of 20 Febry 1812, Surveyors were directed to make a Survey & plan of the premises - The report of the Surveyors is sufficient to shew that the land in dispute is not an Island, but part of the Plffs land -

Bedard for Defend - The Report of the Surveyors not compleat - the last Survey made without notice to the parties - & all Defend. Witness not heard - The Surveyors were enjoined to make their Survey as well at low as high water - they have made no survey at high water - which is very materials - The Survey not complete, in regard of measuring the totality of the Plffs land - That at all events the Plffs action ought to be dismissed, as by the letter of the Seigr. she has filed, it appears

thereby

thereby that she has the full quantity of Land she claims exclusive of the Island in question — refers to the Survey & plan of Papineau in 1803 — Depos. Jos. Lalande & Antn. Lalonde ought to be rejected as incompetent W. being related to one of Pleffs — This was assented to by Pleff —

Perelle v Bougret & Loisel. Int.

Action hypothecaire, for arrears of rents —

Burder for Pleff — Pleff prosecutes under a transport — Carter for Deft. —

Sullivan for Deft. Intervening Party, who takes fait & Cause for Deft. — The transport signified to Deft. only in Feby 1816 — The previous signification by Deguoi, not proved, but by testimony of Deguoi, wh. is inadmissible — The demand not being regularly made, ought to pay the Costs —

Denaut v Gamelin

action on a Promissory Note —

over till to morrow

Roi
vs
Papineau

Case submitted, on proof admitted —

Boudrieau
vs
Granelle

action for a voyage de fait, —

Bender for Plff. refers to evidence adduced & prays Judt —

Quesnel for Defdt — admits the injury, says that he offered to indemnify the Plff for the same by giving up £6 — he owed for the Rent — That no damages have been proved by Plff

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St. Denis
&
Jos. Lebert dit

On Report of Experts to estimate the value of Oats destroyed by Defdts Cattle —

Rolland for the Defdt — Experts not sworn nor did they give notice of their operation to parties —

Friday 11th October 1816.

Delisle v. Phelan } Exceptions dismissed.

~~Griff~~ Castongué v. Cook } action on deed of Lease for rent.

O'Sullivan for Deft. Not bound but as Cautioner & entitled to discussion of principal debtor.

~~Hichteau~~ v. Robillard } action on deed of Sale.

Stuart for Deft. sets up that there were mortgages due on land &ct. were not known at time to him.

Boirré for Pltff. Pltff does not alledge that he is troubled by any debt of Pltff. Poth. Vente No. 282

Arnoldi v. Brown. cur. } action for attendances & medicines.

Stuart for Deft. pleads as Excepn. that Decln. is irregular as some Counts in Decln. are agt.

Defend. personally, & others agt. him as Curator.

Bourré for Pltff. The demand & conclusions are as the Dfend. as Curator.—

Laberge vs Laberge } action for arrears of rente viagere. —
case submitted on evidence adduced

Demault vs Gamelin } action on Promiss. Note —

Stuart for Dfts. No legal Indorsement of the note to the Pltff — St. 34. Geo. 3. —

Sewell for Pltff. The Note not within the exception of the law, as the payee altho' he cannot write, yet can indorse the note by his mark to the Pltff

Stuart. cits case Osborne v Baldwin, decided in appeal where action was dismissed where the form of Indorsement not as prescribed by law — the word signed is explained by the 9th sec. of the act, as distinguishable from a person making their mark —

Hammond vs Wilson — } On Pltff's mo. to reject Exceps. from record as not filed within 24 hours —

Stuart — Pltff's Exceps. en droit is a demurrer, as it goes to the substance + not the form of the declaration —

Boston for Pltff. cites case of Auclair v Dennis where similar Except. was dismissed —

Saturday 12th October 1816 —

Castonguè & Cook — Exceptions dismissed — the parties

Arnoldi v Brown et al — Exceptions dismissed — the Court considers that the Defendr being sued in his capacity of Curator all the Counts in the Declr must be considered as applying to the Defr in that capacity only —

Hammond v Nelson — The Pltff's mo. rejected — The Court considering that the matters pleaded by the Defendr were not merely to the form, but to the substance of the demand

Mr Arthur v Irvine & Co and E Contra — Action for recovery of value of Timber & Staves
Trial by Special Jury. —

James Gillies of Montreal, Cooper, Wr for Pltff

Verdict for Pltff £500 & Costs —

M^c Lean
~
M^c Vey.

on action of assumpsit for monies expend in purchasing shoes ~~for~~ for the Defend^t—

Grant for Pl^ff. prays Judg^t. on the evidence adduced—

Boston for Defend^t— Pl^ff makes no tender of any shoes purchased by him for Defd^t— on the contrary he has done acts of ownership over them by sending them to upper Canada—

Park
~
Bragg
&
E contra

On Exception to the Incidental Demand

Grant for Defd^t— The Incidental demand has no connexion wt. the Principal demand & therefore cannot be admitted—

Boston for Defd^t. The Defend^t. pleads payt and also that he did work & labor for Pl^ff for wch he founds his Incidental demand— Objects to the Incidental demand set up to the Incidental Demand of Defd^t. should be dismissed as irregular as Pl^ff ought to have joined all demands he had ag^t Defend^t in the same action—

10

Monday 14th October 1816.—

Witness day.—

Tuesday 15th Octr 1816

Witness day.—

Kimball
vs
Bourque

On defendr mo. to be heard on her Sermt supplementaire. — as to time Pltff remained in house.
Opposed by Pltff —

Wednesday 16th Octr 1816—

Bell.
vs
Kemp
dal

On Defendr motion to set-aside the Interlocutory Judt. of 10th april last. dismissing the exception filed by them.— mo. discharged —

Griffin dux
vs
Fraser dab

action to recover damages on Eviction from property sold to Pltff by Defendr late husband —

Ross for Pltff — Exhib. No 12. Deed between the

Exhib. № 14. Plan of Charlands, to shew the improvement on the property – № 17. the proceedings on the Garantie № 18. Judgt. of this Court of 20 Octr. 1808. – Exhib. № 94. Statement of the revenue of Estate – № 123 Statement of the damages claimed by Pltffs – the verbal testimony corroborates this statement & shews value of the Estate to be £15,000.

Stewart for Deffts The Judgt. on Excepn. of lis pendens ought to be revised & rescinded, as the enquiry for damages, depends upon the nature of transaction between the parties on which the final Judgt. of 20 Octr. 1808 was rendered – Every Judgt. qr does not determine the right of the parties and put an end to the Suit, is Interlocutory, & therefore the Pltffs ought have taken proceedings under the reserve contd. in 5th Judgt. of 20 Octr. 1808, instead of the present action –

No evidence in the Cause to shew death of Lassagan – the Expte. Mortn № A. does not identify the person – the Certificate itself not authentic – No legalisation made of it, as used in France –

Exhib. № 3. The Certificate of Mr. Mountain from Mr De Montmoulin's Registr of the marriage not authentic. –

The Pltff. is entitled only to a restitution of price he p. to Langan & not Damages he claims — The Pltff was participating in the same fraud wh late P. Langan, and not entitled to damages — the evidence filed by Pltff himself shews this — the whole declaration in the Original action between McCord & Langan states it — Potts. Vent 189. 190. where eviction arises from a knowledge of defect of title supposing always no bad faith in the purchaser —

The damages claimed are founded on two points. 1. Law Expences — & 2d Improvemt. of property in Pltffs hands —

1. No other expences can be allowed beyond what was allowed in the action in this Court, without appealing from Justice as those appeals were made at the risk of the party appealing — No proof of the Costs on this appeal —

2. As to such parts of the property wh Pltff. had alienated before Judgt — of 20 Oct. 1808, the damages claimed cannot be applied, as the persons purchasd from Pltff must be considered bona fide purchasers entitled to hold the property — Exhs. No 114. the arrangement between Pltff and Mr. McCord, cannot affect the interests of Defdts as McCord was not entitled to any part of the property thereby assigned, nor can the Pltff found a right to damages thereon as Defdts who were no parties thereto. Damages in a case of this kind ought to be estimated

according

according to what the parties had in contemplation at the time of the Contract — & the improvements made on a farm by converting it into a town with Streets and buildings, must be presumed never have to have entered into the contemplation of the parties — particularly if the price given for same by the original contract be considered — The valuation filed applies only to Griffintown q^l^ Plff^f^ had alienated before the action & therefore cannot apply — as to the farm — there is no valuation at best no evaluation ought to be admitted by Court unless made by Expert —

M^r^ Sullivan for M^rs^ Leslie submits case on the arguments used by last Counsel —

Sewell for Plff^f^ in reply, The exception of lis pendens has been determined — The damages ~~then~~ claimed had not then accrued, & arose only in consequence of the Judgt^t^ rescinding the Deed between Langan & Plff^f^ — There is no proof of any participation of fraud on the part of Plff^f^ — the Judgt^t^ of 20 Oct^r^. 1808 admits their right to damages, q^e^ would not be the case had any fraud appd^ of them — Nor is there any combination

between

between Plffs. & Mr Ford by the agreement made between them in consequence of the 2d Indt. — fraud ought to have been alledged & proved at this transaction, it cannot be presumed — Poth. Vente. 325. also N. 132.

The Defendts by their plea admit the death of P. Langan —

The acte of Isabelle filed by Mrs Langan makes out proof of her state.

The Indt. of 20 Octo. 1808. rescinds Langan's deed to Plff which affected the title of every person holding under them & the agreement they entered into was to avoid litigation & expense — The Plffs entitled to all the damages of the improvements — Poth. N: 69. — Vente. N. 132.

Biddlestone
vs
Van Allen

On report of arbitrators —

Osullivan for Defdt prays homologation of the report —

Sewell for Plff. There is no report of arbitrators before the Court — The arbitrator of Defendt. proposes the cause by an opinion he gave in the same —

Osullivan in reply — No sufficient ground alledged at the Report —

Masse. } Damages for breach of Contract — S/r. assumpsit
Cormier } for not carrying & delivering a quantity of oats spec
to one Kuper —

Stuart for Pltff — It was necessary that Defend. should have shewn a receipt from Kuper to exonerate him —

Vigé for Defd. The Contract was with Kuper as Com'y General, and the Plaintiffs declaration states it so — The W. of Pltff. Kuper, is an interested person, as he exonerates himself by his evidence from Payt — & by his cross exam it appears he was not always in the habit of giving receipts for the grain delivered to him — Barret, the Clk. swears to the delivery — The Cause is Commercial

Stuart in reply — Kuper is no party to the Contract — & therefore a good W. & a delivery to him only can avail — as no proof that contract was w. Kuper in a public character

Content } action to obtain enjoyment of an usufruct
Beauchamps } reserved in a certain deed of Donation by
Pltff to one Masta. —

Rolland for Defend. — The declaration does not describe where the reserve the Pltff claims is situated The Plaintiff has made no proof of any intrusion on his reserve, nor any proof of his demand —

The

The Witnesses contradict themselves & shew that the local has not been well explained by the action — The manner in wh. the parties possessed the property shews in what manner they meant that the Contract should be understood —

Papineau for Defr. The contract is obscure, ought to be so interpreted that the rights of the parties be not injured — according to the interpretation of Pltff. the Defr could not enjoy his house & property —

Stuart in reply — It is a matter of law as to the interpretation of a Contract — & as to the enjoyment the parties have had under it — The case made out by the Wr particularly the Surveyor produced by the Defendr —

Taylor
vs
Drinan

Action for delivery of hay sufficient for a horse & Cow for a year — £33 —

Stuart for Defr The action must be determined by the interpretation of the Contract between the parties, the reserve of hay being joined to the reserve wh. Pltff made of a house, & ought to be furnished on the farm —

Hart
Burns

action on a promissory Note —

Grant for Pltff — The Note was given to A. Hart
& not to Pltff — the words — intend, have been
added to the note — the place where dated not clear —

Thursday. 17th October 1816. —

Kimball
Bourque

The mo. for Sermont suppletoire granted

Hamilton
for Denis

on mo. to dismiss action for want of
Security for Costs —

Stuart for Pltff states that Pltff resides in
Montreal within the Jurisdiction of the Court. —

Jeffreyman
Gerhard

Mo. for Judt — one of Note not due
but demanded on acct of the Defendt's being
about to leave the Province & not having
any property in it. —

On Petition of Hertel } Mo. for an Envoi en possession. —

Bedard on part of Mr Guy who had been appointed Curator to the ~~vacant succession~~ absentee & that J. Bte. Durocher was the attorney of the said absentee until his death in 1811, & that during the life time of sd. Durocher the sd. Hertel must be considered as present, & that since the death of Durocher a sufficient time has not elapsed to entitle the Petitioner to obtain the Envoi en possession —

Hunter v. Painter } On Pltff's mo. for Judgt. — Un lean filed to shew a commencement de preuve par ecrit

Stuart v. Forbes & Gerrard. } On mo. that Garnishee answer over —

Daigneau v. Vandall } action en separation de biens — Case submitted on evidence adduced

Nanness
vs.
Bryden

action on a Promissory Note —

Ogden for Pltff asks for Judt on evidence

Brennet
vs.
Legault

action to compel Defd. to name Experts to settle a Cour d'eau. —

Stuart for Defendt — The action does not state sufficient facts to entitle Pltff to conclusions — where the inconvenience arises from nature the Pltff must get rid of it in the best way he can, but cannot compel his neighbour to cooperate with him —

Lacroix for Pltff. contends that the Declr is sufficient —

Burke
vs.
Scott

On Defts mo. to quash process as irregularly issued & not under delays reqd — being only 4. instead of 8. days. —

Bourret for Pltff — The Defendt appd & moved the day after — therefore too late — The Defendt also moved for Security for Costs, wh was granted

Ogden for Pltff — Had the Defr made this motion

for

before he moved for Security for Costs, he would have been considered as waiving that right, & therefore moved it as soon as that Security was given —

Bell
v
Kemp

action for assault & battery —.

Ogden for Plff — states evidence to move for Judt.

Arnoldi
McCrea
& Allard Oppt

On opposition of Allard for house Rent —

Rolland for Plff — The opposant claims 2 Years arrears of rent prior to 1814, whereas by law the propr. can claim in preference only 3 quarters & le courant. — The first count not proved — & the second the oppt — not entitled to any privilege.

Bridge
Boyden

Case submitted

Bridges
Leland

action for goods sold —

Rolland for Deft — a nonpt for £10 — on act & therefore Pltf. not entitled to recover the amount

amount - thy claims. —

Regneau
&
Meunier

action for arrears of a Rente Viagere —

Lacroix for Pltff — obj^n to 2 Ws. produced by Defd^t. viz Legris, on ac^t of interest — Talon on Masson — as proof is inadmissible by Law —

Rigé for Defend^t — the question depends upon the interpretation of the deed of Donation made by Regneau to Labelle. Exh. N^o 1, the deed is dated the 19 Nov^r 1796, & the rent is stipulated to commence at St Michel follows — the rent claimed from between St. Michel 1814 & 1815 — nine & six months — qt — from the nature of the stipulations & the mode of making the pay^ts must be considered as paid — the Defend^t contends that the payments made were on account of the time to come, & not for the time past —

Lacroix for Pltff — refers to evidence on the question produced —

Hagar
vs
Mills

action on accepted draft

O'Sullivan for Defr. the draft was paid before it was indorsed to Plff

Beaubien for Plff. Such proof not sufficient

Steib
vs
Deshautels

action for recovery of certain effects belonging to Plff

Grant for Plff - case supported on count for Trover.

Bruneau for Defdt objects to the nature of evidence made as insufficient to support the action, as no proof of value can be admitted above 100$

Friday 18th October 1816.

Johnson
vs
Hutchens

Indt for sixteen cents

Bricault
vs
Bricault

Report

Berthelet. } In two Causes. —
v. } —
Berthelet. } Action dismissed. —

Pltff — counsel referred to a case in Riccard —
traité des Donations. —

St. Denis
v. } Report now. — —
Libert. —

Mathieu
v. } Judgt of Dism — Children not put
Berthelet } under direction of the Pltff

Johnson
v. } Interlocr for
Hutchins

Pagé
v. } Action dismissed — no proof —
Guerin.

Paysant.
v. } Judgt — for damages, but not to rescind
Gervais: } Contract as demanded —

Denaud
v. } Exception dismissed — costs on Indmt —
Gamelin

Beaudry
v
Vincent. } Action dismissed, there being no privity of Contract between the parties —

Granville
v
Bourdeau } Judt — for £12 —

Taylor
v
Dinan. } Judt —

Daydab.
v
Brass. } The mo. to fix cause for evidence

Parke
v
Brass. } Exceptions to Incidental demands — dismissed — The law admitting Plff to
&
E Contra } make an Incidental demand upon an Incidental demand — also that all Incd demands tending to same conclusion with the demand in chief ~~can~~ not be set aside. —

Buck.
v
Scott. } Mo. for Security for Costs ~~dismissed~~

Lebaron
v
Legault } Exceptn dismissed Costs reserved

Hagar & Mills — Parties admitted to proof

Delisle & Philan — Judgt for Plff

Arnoldi & M'Kay & allan appts — Oppos: for irregularity dismissed —

Contant & Beauchamp — Interlocr for appointment of a Surveyor

Biddlestone & Vanallen — the Report of arbitrators confirmed & action dismissed —

Vannest & Boyden — Judgt —

Whitcomb & Curtis

Stuart
Forbes
&
Gerard
T. Saisi

Ord T. Saisi to answer over to certain Interrogatories proposed to him by Pltff. —

Buck
vs
Scott.

Ord Defendt. mo. for quashing Process for irregular service disallowed, considering his prior application for security for costs a waiver of the irregularity ~~a waiver of any irregularity of the service of process~~ — Ricard —

Bagg
Wolffe

On Exception to regularity of service of Process en garantie — no copy of original declaration — Sufficient for Defdr. this Exception shd. have been taken by ~~motion & not by~~ Plea ~~& not by~~ motion

Carow Tutr
vs
Rochon.

On Pltffs mo. that the instance be reprise by the minor now of age —

Tilly.
Brass

On Report of arbitrators —

Hammond
Wilson.— } On Exceptions to the sufficiency of the declaration —

Stuart for Defendt— The first count demands £125. the £. 2 S. £255. 14. 7 each— the sum he acknowledges to have rect. of £53— must apply to the last Count— as he claims the balance of £202, 2 sous in no wise to the first Count.— & therefore irregular— There are two pleas of Exception—

Boston.— The substance of the first Count comprehended in the other Counts.—

Saturday. 19th. October. 1816.—

Stubb.
Deshautels } Intert

Pennelle
Bougret } Judt—

Rogeau
Meunier } Judt. ap. Deput

Fraser
Forbes } Judt

Caron Tutr
vs
Rochon } Actn. rejected

Hammond
vs
Wilson } Judt rejects first count in Decln

Tipperman
vs
Gerhard } Judt for the note due but not the other note yet not due although Defr about to leave the province

McLean
vs
McVey } action dismissed — proof insuffe

Dufresne
&
Legault } action dismissed

Bell
vs
Kemp } Judt for £50 damages

Mappe
&
Cormier } action dismissed

Baron }
v.
Baron }

on mo. for rule to shew Cause why Defendt
shd. not be permitted to take off the defaults
made agt. him, on the ground that the Plff after
a settlement w^th him had procured a return of the
writ to be made in Tibi Testimonium & proceeded agt him
after Plff had promised not to proceed on the action
that gave Defendt a discharge from the action —

Cadiens }
v.
Bone }

On Plffs. mo. for payt. of monies to
Plff in hands of Deft —
Delibd —

February Term 1817

Saturday 1st Feby 1817

Gauthier v Forbes } Defdt. pleads compensation —

Bedard for ~~Defdts~~ Defdt. monies & articles pd. for the Pltff, on an acte de Donation qt. they owed

This proof of value of the articles cannot lead to a long discussion, qt. is the only objection to such a proof

Lacroix for Pltff — does not the payt. nor the right of Defdt. to pay —

Bangs v Barker } on Pltff. mo. for attacht. agt ~~one~~ one Amasa Thomas ~~& Ol. Barker~~. Guardians of the effects seized & who had refused to deliver up the same to the Sheriff when reqd —

Service of Rule nisi on Guardian, by a person styling himself Deputy Sheriff — The party made default

Monday 3 Feby 1817. —

Gauthier v Forbes } Plea of Compensation dismissed —

Burton v Desrome & Cartier Interv. } on Int. Party's mo. for stay of proceeds till paymt. of Costs in Appeal —

Ogden for Pltff — the mo. too late, as Interv. party consented last Term for setting down Cause for hearing on Merits, under which the Cause is now to be heard

Menecler dal v Clarke — } mo. for hearing — Objn. parties not at issue

Bagg v Barker } mo. to enter appce. for Amasa Thomas granted

Willard & Co.
v.
Hagar & Martin } Action of assumpsit —

Beaubien for Deft. Martin — The goods were sold to Hagar on his sole acct. & not for the partnership of Hagar & Martin — The articles charged to Hagar alone in the books of acct. of Pltffs — That the action ought to be dismissed even agt. Hagar, it being proved to be on a different contract from that stated — Symes v. Sutherland in appeal —

Burton for Pltff — Evidence adduced proves that Defts. were partners —

Symes
v.
Sutherland } Notes said —

Munn
v.
Johnson } On Pltff. mo. for ex. of Deft. on faits & art.

O'Sullivan for Deft. — Commercial transaction & of faits & art. cannot be received —

Burton — The ordc. of 1785 did not abrogate the existing laws of evidence under the law of the Country, this Ordc. was made in support of trade of Country —