Kings Bench Montreal

Civil Pleas.

February Term. 1817.

April Term "

June Term "

February Term 1817.

Saturday 1st Febry 1817

The Ch. Just. absent at Quebec —

Gauthier v. Forbes — Hearing on exception —

Bedard for Defr — pleads compensation as the demand of Plff — this demand founded on an obligation — the compensation, for monies paid & advanced for the Plaintiffs and different articles furnished on their act — being for a rente & pension viagere which the Plff owed under a certain deed of Donation & sale made to them — That proof of the delivery of these articles can be easily made and without leading to a long discussion, which is the only objection made in law agt such demands when not entirely liquidated cites Pothier —

Lacroix objected to the sufficiency of the plea, as the payts in question were not made on act of the Obligation — denies the knowledge of the payts & the right the Defdr had to make them on act of Plff —

Bangs – Barker — On Plffs mo. for attachr agt one Amasa Thomas the Guardian of the effects seized —

Monday 3d Febv

Gauthier v Forbes — Defdt exception dismissed —

Burton v Derome Cattin Intervs — On Interv.t partys mo. for stay of proceedings till payment of Costs in appeal —

Ogden for Plff — Mo. too late, as party consented last term to setting down the Cause for hearing on the merits, under which it now stands for hearing on the 5th inst. —

Menecliental v Clarke — Mo. for hearing — Objd — parties not at issue

Bangs v Barker — Amasa Thomas the Guardian was allowed to enter appearance —

Willard & Co v Hagar & Martin — action of assumpsit —

Beaubien for Defts Martin. — The goods were

were sold to Hagar, on his sole account, and not for the partnership of Hagar & Martin – the articles – so charged in the books of account of Pltff. Action ought therefore to be dismissed as to both Defendants as proof does not substantiate the Contract on which the action is brought – but only between the pltff. and Hagar alone – cites case of Symes. v. Sutherland in appeal –

Boston for Pltff – Evidence sufficient – at all events ought to have judgment agt Hagar, as the undertaking of the parties was several as well as joint –

Ardon. v. Sharpe & Gilson
2. Esp. N.P.R. 524 –

Reed. v. Whitehead
5 Esp. 122

Munn
Johnson

On Pltff. mo. to ex. Defdt. on facts & articles
O'Sullivan for Defdt – The case is Commercial and no such proof can be admitted. –

Boston for Pltff – The Ordr of 1785 did not alter the existing law as to proof of Commercial facts, it only introduced the English rules of evidence as an auxiliary means of proof

Tuesday 4th Febry

Counsel v Cantwell } mo. to discontinue without Costs rejected

Burton v Dirome & Cattin Intervs } Mo. rejected —

Dodge v Pickle } actions for goods sold
Exception to Decln

Stuart for Defdt — stated that goods were sold to, for or on acct of Defendt — this indefinite & not entain sale for another person does not give an action to the person selling who is merely an agent for the purchaser of the goods — same for goods sold on account of Plff Defdt & if all the cases were stated gave an action, then ought to be certainty as to qt Defendt ought to answer —

Gale for Defdt — The terms synonimous — same as a sum payable by six months or half yearly —

Fraser
v.
Namur

action for Note –

Sullivan for Defd. There was an open acct. between the parties & the monies pd. have been applied to that open account instead of the note, of. Bears interest & therefore monies ought to have been applied in discharge thereof

Boston for Pltff. The monies paid were on acct. of goods purchased at auction, which were ready money articles, & the receipts given for it are generally at the bottom of the bills of parcels – The Note in question was made by Defendt. as security for another person, & it was only after that person became insolvent that Defendt. was called upon. There was no reason for the imputation now set up – it was not pretended at the time – see Poth. Obl. Nos. 565. 566 – see also Ferr. Vo. Imputation. – Defendt. ought to have made the imputation at the time of payment – which was not done –

565

Hillicker
v.
Mc. Carty
&
E Contra

action of revendication –
on right of Defendt. to set up Incidental Demand –

Boston for Defendt. The Defendt. had a claim

claim of Pltff for house rent had a right to retain the effects till same was paid & the Incidental demand is founded for the house rent so due —

Wednesday 5th Febry. 1817

Dodge v Pickle } 2 first Counts of Decr. dismissed

Hillicker Mc Canty & Contra } Exceptions dismissed, but without Costs

Bangs. v Barker & Thomas Gaundien } on rule to shew Cause why attachmt. shd not be granted for refusing to deliver up the effects seized —

Gale for Gaundien — offers to deliver up the effects —

Ogden for Pltff. Gaundien to pay Costs —

Pinsonneau
vs
Draper. —

On Pltff's mo. for a Hab. Cor. ad testificandum
Objected that it does not appear that Wit. is in Gaol — no notice of motion. — not shewn under what charge he is held in Gaol, as it may be for high treason — otherwise improper to be granted —

The Court upon its appears. that the Pltff had used diligence under a writ of subpœna to obtain the evidence of the witness, & that it appd. thereon that he was confined in Gaol, granted the motion — If the Wit. was not in Gaol, or could not be brot. up the Sheriff would make his return to that effect —

Henry Smith a wit. for Pltff — proves assault on 15th May last —
Theophilus Woodard. vs. contradictory —
D. sworn. —

Lawson. Fowler —
Law[ce] Fowler —
Guy Richards —
Thomas Bears — —

Charge — laying hands & violence — assault

Verdict for Pltff — 1/ — Damages

Thursday 6th Febry. 1817

Finlay
v.
Bedard
&
Oppots

on mo. for delay to file reasons of opposn

Lagueux
v.
Ballingall

action on note —

Pltff. mo. that Defendt. be held thro conclusions in his plea, not being a Communal cause

Ross for Defr — can Communal — it regards the freight claimed by Pltff. Ship master for demurrage —

Raymond
v.
Ballingall

same point —

Ross for Defr — case strongly for Defr —

Whitcomb
v.
Curtis

action on an award —

Grant for Defdt — Variance between act proved and the act declared upon — 1 Chitty 303.

No time limited for making award in the bond
No award within the time — nor published to
the parties — Now. Denist. Vs arbitrage —
Stuart, counsel for Defdt — Objects. a variance
between the Submission & award states & that proved
The submission states is of all differences — that
proved, refers to certain Law suits then existing between
the parties. — The award to be given in 75 days
from the Date of Submission — By the award
it appears the award was to be given in 60 days
after the submission — States, an arbitration
bond or decision — no such word as decision used in
the award — Cliff has shown no Cause of action
Then appears to have been an error in the submission
but as this is not alledged — cannot be helped by the
Court — the parties were to give in their papers to
the arbitrators to empower them to give their arbitration
bond within 60 days after — the giving an arbitration
bond was not to decide the differences. & cannot be
supported or helped by the Court — The arbitrators
have not determined anything as to the rights of
the

the Defendt — The award given to one of the parties only — wch was not regular — The sentence arbitrale must be pronounced in the presence of the parties —

Boston for Plff. — The words in the Submission are general — so the Declaration — The making an arbitration bond by the arbitrators necessarily means their award, because the making a bond did not belong to them — could not determine the points submitted to them —

see 1 Chitty 303-4 — & 223 —

Friday 7th February
& Saturday 8th Febry } Witness-days

Monday 10th February 1817.

Raymond
vs
Bullingal

mo. to change conditions in plea granted — the parties must be merchants or traders to entitle them to a trial by Jury —

Menedier
vs
Pierson

Action on promissory Note — objected that Pltff had given no notice as in case of general assumpsit — Court considered Action as of Care & not within the rule requiring notice —

Menedier
& Massue
vs
Pierson

mo. for rejecting plea of exceps. per. à la forme granted, because 2 Guineas not deposited

Blake.
vs
Yule

Action of assumpsit for goods &c
Tried by Special Jury —

Evidce — 1. a Letter from Defts. to Pltff
2. Bill of Lading of goods sent by Pltffs Deft
Witness on Com. Rogr
1. Wm Burns —

2. Geo. Ross —
3 Chs W. Taylor —
4 Jos. Jones — ... .

Blank & Exp. of Defe in part Last

Defendts Wits —

Samuel Barrett — In Schooner Hall — 17 barrels sugar —

Walter Bonny — ...

Charge — The agent bound to the ordinary course of making purchases — not bound to attend to the packing up & heads the articles — the course is to get men to examine them when they came to hand — course in goods shipped from England — survey made — evidence as to bad quality of sugar not made out —

Leakie
v
Viger — } to stand over to 15th

Burton
v
Derome
&
Cattin Intr } action en revendication —

Stuart for Intervenant party — The Court by its Interlocutory has declared that the Pltff has not made sufft proof the action must be dismissed and as Intervenant party is the holder he must be entitled to the timber in question —

C.

Whitney
v
Cryster — } on Dpts mo. for security for Costs — the writ returned the 1st Ins mo. made the 7th

Osullivan for Dpt. the rules of practice do not apply in cases of Capias —

Ogden for Pltff — Rule of practice applies in all cases —

Clark
~
Bragg
&
E contra

on Report of Arbitrators —

Bolton for Dft. — contends he ought to have costs on his Incidental demand

Oakes
~
Greatwood

action for restitution de Dot etc — Guyon. v. Porteous —

Tuesday 11th. Febry. 1817. —

Brook
&
Belanger

action on promissy — Not —

Roi for Dft. pleads for excep. that Plff had granted delay beyond term — conclusion that action be dismissed

Beaubien for Plff — Excep irregular, as he concludes to dismiss the action — whereas it ought only to defeat Dil. droit. vo Excep. Dilatoire —

Castle
v.
Bags

Nothing said —
Defendt. asks Judgt. as the Garnt.
Boston for Garnt — submit case —

—

Force
v.
Holden

On report of Arbitrators —

Ross for Defdt. Does not appear that the parties were heard before Arbitrators —

—

Bruce
v.
Jones.

On report of arbitrators. —

Ogden for Defdt — The third arbitr. not named by the parties, nor arbitrators — the man who signed the award, & the person named as third arbitr not same. —

Sewell for Plff — denies fact —

5 Feb. 1812
Masson & Hall
v.
Mabbat &
Rufs — vs. arbitrators
Ord
Powell

Leon Lalanne
Geo. Mitchell } arbitrs
John Powell. Two arbitrs named by consent — & who joined wt. Mitchell without presence of Lalanne

Merechie et al
v.
Eckart & Castle

action on promissory Note —

Ogden for Defdt — Plffs. do not state themselves as Copartners & cannot join in the action nor can Defdts. sued as Copartners & therefore cannot be sued jointly —

Blackwood v. Dagenay — On Exceptⁿ. — same as in case of Brook v. Belanger —

1 Pegram 194

Wednesday 12th Febʳʸ 3 —

Brook v. Belanger — The Exception wrong stiled Exceptⁿ. Dilatoire being in its nature peremptoire — thereon party admitted to make proof of the fact therein stated

Blackwood v. Dagenais — Same Case —

Force — v. Holden — Award set aside —

Brace — Jones — Award set aside —

The parties wᵗ. Arbitrators agreed to name a third without there being any difference of opinion and before they had entered on the business — and one of the arbitrators & the 3ᵈ. man made the award without the participation of one of the Arbitrators —

Menefee sub
Ackert v Clarke

Exception dismissed —

Stebbins
v
Deshantels
Cur —

Action of Asst — for certain effects which
came to his hands —

Wood
v
Henry sal

Action on promissory Note —
Pltff. asks Instr. — for the balance due by Henry

Burton for Henry — offers balance of £9 — & owes
costs only as in the Inferior Court —

Ogden for Pltff — the Note joint & Pltff could not
driven to 3 different suits — no suffr tender made.

Thursday 13th Febv. 1817.

Young
vs
Banyo

Action for damages for goods lost on board the Steam boat Car of Commerce —

Duncan Cameron Mc donald — was passr on board the Car of Commerce last year — Dispt was Capt — signed bill of lading produced —

5 T. Rep. 396 — Hyde v Trent —

2. Roll. Chart parties. No. 35 —

Held by the Court that the Defendts were bound to prove the delivery of the goods put on their boat for transport ~~ought to be proved~~ to have been made to the Plff. to exonerate Dispt —

Cusson
" } To draw Instr
Cusson
&
Crépeau
Gnt—

Wait tal'
" } Action for breach of Contract—
Sears
Ogden for Plff objected to sufficiency of
Plea — as not answering demand—
Bethune for Defts. Plea suffr— agreement different
from that stated by Plff

Daystal
" } on Excep: of lis pendens—
Boggs
Sullivan for Plff— action was discontd.
on first day of Term & before the plea filed—

McIntire
tal' } An objection to regularity of plea—
vs—
McDonald
Ross for Plff— The Defts has pleaded to the action
after 3 day rule, and with this paper a demurrer
&c regards the form & thereon too late—

O'Sullivan for Defd — The plea contains an Exception peremptoire en droit, & can be pleaded with any matter of fact. —

Bowker
v
Bragg

On Exception to sufficiency of Defendts plea

Upon for Pltff — not stated when Pltff gave the delay stipulated in plea —

Bowker for Defd — Plea sufficient — delay not yet expired —

Brooks
v
Brooks
&
Pltf to oppose

On mo. to discharge opposition for want of moyens. —

Nothing said —

Saturday 15th Febry. 1817.

Buck
v
Scott

On Pltff. mo. for continuance of the Enquete as Wits had come in after he had declared it closed —

Ogden for Dfts — Pltff began exn of his Witss — and afterwards came forward & declared the enquete closed

Brook
v
Brook
&
Platt opt

Pltff moved to dismiss opposition for want of moyens —

Stuart for Oppt The notice is defective not according to the motion — it is, that Pltff would proceed ex parte. — That the opposition is a fin de conserver and no notice was sent within ten days after the Opposition made to fyle any moyens — the oppos^n therefore stands admitted under the rule of practice — The oppos^n was filed in Oct. the notice not given till December following

Ross for Pltff — The notice that pltff wd proceed ex parte is consistent with the practice under the present motion — that rule of practice referred applies only in bankrupt cases. —

Cuvillier
v.
Bardet
&
Asselin
Intervs

The Defend. made default —
The Pltff moved for Judt. on evidence
ex cdv. & ulb — was thereupon entered —
The Intervs party now moved to intervene

The Pltff contends that after a cause is put en délibéré, there can be no Intervention —

Rolland for Intervs party — this does not apply in default cases, when there has been no hearing. —

Mosher
v.
Lampman

On mo. to examine another witness by Pltff —

Gale for Defdt — No diligence appears to have been done to get the wit. in due time —

Ross for Pltff. refers to affidavit of Pltff to shew diligence —

Monday 17th Febry. 1817

McIntire / McDonald — Allegation that Defend. is sued as Tutor to his Daughter Jane, whereas he ought not to be so sued — regards the substance of demand — not the form — therefore Pltff. mov. to reject such plea as to the form, rejected —

Bowker / vs / Bragg — Demurrer pleaded by Pltff to Defts plea rejected —

Wait dal' / vs / Sears — Special plea dismissed ~~as~~ insuff

Day dal' / vs / Brags — Exc. dismissed — but considering that at the time of the plea filed there was room to plead same adjudge Pltff to pay costs on plea —

On Petition of Robt. Griffin — Petition dismissed, as there was no Jurisdiction in the Court to take up the business —

Young
&
Pinsonneau

On action of assumpsit for goods sold
Rolland for Dpt says that proof not made out. —

Brehaut
&
Duncan

Agreed that parties go to proof —

Roi
&
Dubelle

Action for house rent, & for goods sold
Roi for Plff — claims balance stated. —

Pelletier for Dpt — when the brandy was delivered it was not good — Domat. Vente. Lt. 2 Sec. 2 art. 4
Poth. Vente. No. 202. —

Incid. demand for monies laid out for Sports to the Plffs house — & fine incurred by Dpt — on ground that Regulations were not published. —

Hungerford
&
Lampman
&
Brondsea

action goods sold £ —
Ross for Dpt — proof not suffte

Hungerford
Lindsay
& King Intervs

Parties heard — agreed to hear what they had to say further in Vacation if found convenient ~~necessary~~

Bourdeau
vs
Archambault

On evocation from the Inferior Court —

Ross for Defdt — Question regards property in Land —

Hutchison
vs
Pearson

action on promissory Note —

Borton for Defs. Pltff. can have Judt only for £51.5.7 — as stated in note filed — proof not suffe — no proof of original note of wh was indorsed by Defts —

Tuesday 18th Febry 1817.

Cuvillier & al
vs
Bardette

The mo. to intervene rejected —

Brook
vs
Brook
& Platt opp.

The Pltff. mo. to dismiss the opposition rejected, as the Pltff had not given notice

to

to the opposant to fyle his moyens d' opposition within the ten days under the rule of practice — Sheriff's return 18th. Octr. 16 Oppos.n afin de conserver the 19th — notice to fyle moyens 28th. Decr. last — notice to reject opposition on 1st. Febr —

Meltote vs Stevenson } On rule to shew Cause why Saisie Gagerie should not be set aside —

Boston for Defr. The Saisie Gag. will not hold on the goods of a merchant in a shop — Law grants it only on furniture — cites art. 161 —

Grant for Plff cites Poth. Louage. No. 249 —

—

Gordon sup vs Mindel } Parties agreed to go to evidence —

—

Surgeon vs Ratel } action for a voye de fait —

Bedard for Defr. The Surveyor has not noticed the fact of the lot of land in dispute being part

part of the Crown lands — Which is a material fact in this cause — The Pltff has not stated that the land in question is within the Jurisdiction of the Court — To support the action en complainte the Pltff must shew a possession of an & Jour of. he cannot do, as his possess^{n} commenced ~~only~~ after that period — Decln not sufficient in this respect — Pltff cannot have any action for a voye de fait committed on land before he was the proprietor — The Pltff purchased in May — the voye de fait was committed in March preceding —

Lacroix — The poss. of a year & Day is suff^{t} for Pltff to obtain his Judt — even if the lands were part of the Crown lands —

Valade
&
Papineau

} Action on Special Contract for repairing a house — On plea of exceptn to Decln

Stuart for Defdt — The Decln refers to the Contract on which it is founded without stating the — Contract — which is irregular as referring to the evidence — Decln alone too general

Roi for Plff. contends that Decln is sufficient — and not necessary to state more than the point upon which the action is founded — which has been done —

Brooke
v
Bélanger

Parties agree to Evidt. on Exception

Ayer.
v
Watson

Action for value of a horse —

Sullivan for Defendt — objects to the nature of proof by Witnesses, as the object in question exceeds a 100th. Contract between the parties was a Contract de Louage. the sum on that Contract is not material, if the sum now claimed exceeds the 100t. Obl. N° 786 — Louis on Ordre 1667. p. 306 — Domat. ch. 3d p. 94 — Poth. Obl. 788. —

Contends that Depositions ought to be rejected —

Stuart for Plff. — This case was not a bailment regarding the value of the horse, or the property of him, but the use of him for a limited purpose — action is the mis conduct of Defdt. under the Contract — & not for any matter of Contract —

see Louage on Ct. 20. art. 2. p. 6

Supplt on Ct. 20. art 2. p. 319.

Thayer
v
Pearson

action for goods sold &c.

Boston for Defendt the Pltff has not made out the proof of his demand.

—

Beaujeu
v
Martin

On pltffs mo. for Ca. ag Defendt for having opposed the sale of his effects

It appeared that at time of suing a guardian had been appointed, & when bailiff went for sale, that Defdt shut his door & opposed entrance to him —

Upon this return the Pltff moved for a Ca. Sa. and also for a writ of Vend. Expo of effects owned —

Wednesday 19th Febry. 1817.

Mosher vs Lampman

Beaujeu vs Martin } Mo granted

Whitney vs Chrysler } Mo. overruled application too late

Valade vs Pepineau } Plff. allowed to amend &c

Oakes vs Greatwood } Judt — The Court-ors that if the Plff had been in Community with Defdt. she must have been driven to her action in separation to entitle her to her Dot. —

Whitcomb vs Curtis } Judt. for Plff
1. Count held declr sufficient. —

1 Chitty. 303. 4 — and 233. —

Hutchison v. Pearson. } Judt. for balance on note, setting aside as surplusage, the erroneous statement of the demand, as the Case did not require such statement under the rules of practice — held also that on the note indorsed, proof of the Defdt. alone & not of the Drawer was sufficient. —

Ayer v. Watson } Judt. for Plff — Court held that in cases where great inconvenience would arise in the common intercourse of life, the presumption not required — as also Pothier's interpretation by art. 5. p. 398. — Jousse — & Serpillon on art. 2. Tit. 20.

Cooper v. Dewitt } On admissibility of Interrogatories. —

Hadden
-
Taylor

Cur mo. to grant writ of Ca —

Stuart for Dfdt — a writ of Ca. ad Resp. & writ of Saisie arret issued in one & same writ — The writ of Ca. ad resp. a new remedy introduced into this Country by Ordre from English Law — must look to principles of those laws &c — regulate this writ — according to &c — the Creditor who takes the body of his Debtor cannot have his property at same time The Ordre of 1787 seems to recognize this distinction At all events the two kinds of processes cannot be joined in the same writ. —

Curmulier

Gale for Plff — The two remedies are granted by law — There is no prescribed form of law prohibiting the joining the two writs — no inconsistency in the writs — at all events one of them ought to subsist —

Stuart in reply — hardship in regard of a double Security to be given under both writs —

Thursday 20th Feby 1817.—

Roi
vs
Dutelle } Judgt — for Plff.

Wood
vs
Henry
Sal } Judgt. for balce due by Defdt. Henry

Willard
vs
Martindale } action dismissed — altho' one of Defendts. appears to have contracted the debt in his own name, yet the Court refused a Judgt against him as the Contract was different —

Hadden.
vs
Taylor. } Rule discharged —

Hurteau.
vs
Robillard. } Judgt. for Plff, but without ordering any security to Defendt — not considering that there was any trouble in the Case to warrant the demand for such security. —

April Term 1817.—

Present

Ch. Just. Monk.—
Justices. Ogden & Reid.—

Sweetman
ve
Pattee

On Pltff. mo. to reject plea filed too late—

Stuart for Defdt. The Rule at Quebec & the usage is that Defdt. can at any time file his plea until proceedings had agt. Defdt. by Pltff— always admitted upon taking short notice of proceeding to trial—

Munn
v
Johnson

On Pltff. mo. to declare facts stated, confessed and acknowledged, as he did not appear to answer as required.—

Sullivane for Defdt— an affidavit was filed on the day to shew that Defdt. was out of the Jurisdiction of the Court at the time of service of facts stated. and Pltff ought therefore to have sued out a Commission to examine him in that Jurisdiction, but cannot proceed as in a case of default against him.—

Gauthier
v.
Forbes — } On mo. by Defdt. for a day over to answer to pats particulars —

Park —
v.
Stuart. } On Defendt mo. to quash process as improperly sued out by Defdt. as an Attr of Court —

Court states Case of Deschambault v. Ross 2d Oct. 1811 —

Bunker
v.
Lally — } On mo. to quash process from irregularity

Stuart for Defdt — The affidavit stated to have been taken in a cause between the parties — whereas no cause could exist until the Kings writ was sued out — 2. The affidavit does not shew that the goods were sold to Defendt — the cause of action not sufficiently stated — as the goods might have been sold to another as well as to Defendt — 3d. The language of affidavit not correct — the words "no part whereof" — refering to goods sold. —
4th. The language of the affidavit goes only to the Defendts secreting his effects, whereas Ordr refers to a variety of other property. 4th must be included in the affidavit, such as goods, debts, as well as effects

The affidavit refers to Plff being Creditor of Defdt by saying her Creditor — The language of affidavit ~~must~~ comprehends ~~all the~~ only the effects of the Defdt whereas the writ of Attachment is required & has been granted the whole property & effects of the Defendt —

Boston for Plff — The order refers to Plff making affidavit, which cannot be done unless there be a Cause

Wednesday 2. April 1817.

Sweetman
vs
Pattee

The motion granted —

Parker

Bunker
vs
Lally

The Court held affidavit sufficient The affidavit goes to effects — the law says debts & effects — had debt been attached, it might have been a question whether this part of the writ would be carried into effect — but as effects only appear to have been attached the writ so far is regular & the affidavit sufficient —

Munn
vs
Johnson

Rule to 7th for Defdt to answer on facts last —

Park. } v Stuart. } Motion rejected. — see case decided — Ross Dss Chamb. ault. v. Ross. —

Herrieux } v Vezina } Plff dis. cont.

Ex To get Deft by Commission rot. up. for examination. —

Pothier } v Fouchers } al. Ord. Plff. mo. that Defend. should be held to unite in naming a Counsel in cross-examining the witnesses of Plff as they have all contested the Plff. demand and ought not to be permitted to cross-examine separately —

Bedard for Plff cites. Nouveau Denizart. Vo Associé — & Resp. Vo Consorts. —

Lacroix for Defend. Fouchers — his Defence is different. — he is sued as Tutor, not in his own name, & therefore not same interest wt other Defds. — —

Pigeau 267. 8. 9 —

Sanford
&
Draper

On action for Goods Sold

Ogden for Defr. — there is a deficiency on some Skins sold, q. will make a deduction of about £8. —

Boston for Plff. — The deficiency not proved — Defr. allowed Skins to remain in Store several days after Sale —

Platt
vs
Bragg

On Promissory Note. —
Notice said —

No 620
Clement
vs
Malbouf.
Maguillivray

action for having dispossessed the Plff of a seat in the Church of Terrebonne —

On Exceptions

Bedard for Defend. — This is an action en complainte — which is not admitted for poss. of a seat in the Church — the Patron & Seigr. Haut Justice only can have this action —

2. The only action is that of Injure, but not of complainte by reason of the trouble complained of —

3. That Plff as Capt has no right or privilege

to

to have a pew in the Church--

4. That Pliff. at the time of bringing the action was not Capt. of Militia - That as the Militia act had at the time expired - there were no officers of Militia in existence - the law expired 1 May last - There is an Ordre of 1787, q. may be considered to have been a perpetual act was repealed by Militia act, - but this Militia law having expired without being repealed, this Ordre cannot be revived -

Lacroix for Pliff - The action is not en complainte but possessoire, for an injury done to Pliff in his possession of a pew -

That as Capt. is entitled by Reglement of 1716 - 1 Vol Edits - to a certain pew in the Church -

That Pliff holds his situation of Capt. of Militia appointed by the Crown - his appointment does not depend upon the Militia Law -

Bedard for Pliff - By reglement of 1716 - women only pain benit & can benite, but - ogives no right to a pew in the Church -

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No 634
Clement
vs
Malbouf

The action for having refused to give the Pliff as Capt. the pain benit -

The Defend. pleads – that he cannot alone be sued for this action without joining the Curé & other marguilliers with him who represent the Church –

2. Plff is not Capt. de la Cote, altho' he may be Capt. of Militia – The Cote or place where the Church is built is within the district of another Capt. viz. Capt. Limoges –

3 That by change in the laws & Constitution since the last 20 years the Reglement of 1716 cannot be considered to be in force – as there are now not only Capts. of Militia, but also majors and Lieut. Col.s who would not be entitled to such honors in the Church as now claimed whereas the inferior Officer, the Capt. would be entitled thereto –

Lacroix for Plff – cites case of Dumont v. Rochon to rescind an act – q.t. was supported in appeal, altho' it regarded the property of the Church – The present action is entirely personal as the Defend. – that he be held to give the Plff pain bénit – cites Trudeau v. Pepin in Oct. 1796 – The Plff alleges that he is the oldest Capt. in the parish, this is enough – There is no question about

about a higher officer in the Militia - but the oldest Capt. de la Côte -

Bedard in reply - refers to Case of Vijé & Bender in favour of Montreal - the exception was that the Plff as Mayor could not maintain the action for poss. of a pew in Church - which was decided sufficient to dismiss the action -

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Vaillancour
Drouin } action of Debt on a deed of Sale

On Plff's mo. to reject some depositions in the Cause, as addressed to prove sums above a 100$ - Poth. Obl. 751 - Rep. vo preuve. p. 577. Commencement de preuve par ecrit, must be made by the party Debtor. not by a third person - The mark of the Defr to a paper in the presence of one Witness, is not such a Commencement de preuve par ecrit -

Bedard for Defd - The paper in question is a semi-preuve & not a commencement de preuve par ecrit - The mark of a person, is same as

(see opin.) his

Marcotte
vs
Bellanger
et al.

Action of Debt on deed of Sale
Exception by Defts

Bedard for Defts. The Pltff joins a Judt to he has already obtained for a part of the Debt in the Inferior Court — so as to bring action into this Court —

Lacroix for Pltff. The Judt. agt. Bellanger fils was upon him as principal, & Pltff not having recovered now brings same agt the other Defts as Caution, &c

Bedard in reply — The Defend. Bellanger fils is a party to this suit — & Bellanger père cannot be bound to pay what costs have accrued in Suit agt. Bellanger fils —

Lovell
vs
Wait

On mo. to dismiss Cause for want of security for Costs —

Laurence
vs
Robin

Action on Sale of horse —

Rolland for Defdt. The Declaration is insufficient — no contract set forth upon wh he can maintain the action — both Counts equally insufficient —

Lacroix for Plff. Declⁿ sufficient —

qⁿ allowed to amend on payt cost

Platt
vs
Tesseyman

Action on Promissy Note endorsed.

Grant for Defdt — objects to evidence of Gw. Greatwood, and moves that it be rejected as incompetent witness, he being the Endorser. —

Chitty 400 —

Plff cited in reply 7 T. Rep. 601. Ludum v. Over till to morrow — Peake's Ev. 107.
Esp. N. P. 708. Lunn v. Essex
2 Evans Poth. 309. —

Hicks
vs
Cartier
&
Drolet

Remitted till hearing on merits

French
v
Connants
& al —

On Defts. mo. to quash process, as having been served tardé —

Bench for Deputy. upon to Case of Charbonneau v Malo. in 1808 —

Over till to morrow

Chalifoux
v
Marotte
&
Montplaisir
& al. - T. Saisi

On Pltffs. mo. that Contraints be granted as T. Saisis

Thursday 3d April 1817.—

Wolffe
vs
Clarke

Beaubien for Defdt. moved for hearing on the merits—

Borton for Plff— contends that he had a day in Court to complete the enquête.—

French
vs
Connant

To see affidavit filed by Defdt.—

Lamothe
Kelly
&
Allen—
Garnishees

over to 5th—

Bedard
vs
Lagrave.

On Plffs mo. to declare absolute the rule obtd. by Defdt. to render an act—

The Defendt prays a delay to give in the act— owing to state of roads—

Cartier
vs
Dwyer

Action of assumpsit for goods &c

Rolland for Pltff, asks Judt. on evidence above

Lacoix for Defdt. The Pltffs demand cannot be admitted, as it contains intent upon intent — and must be reduced to what he is legally entitled to —

Asylvain
vs
Cuvillier
&
Bardet et al
T. Saisis

On Law issue raised between parties.

Rolland for Pltff — The T. Saisis have not appeared, but Defendt. pleads that the T. Saisis do not owe him any thing this Defdt. has no right to plead for them, but the Pltff is entitled to a Judt. as them —

Beaubien for Defdt — The parties must go to evidence upon adopting on the Law, as the Pltff assumes a right to seize property in the hands of the Tiers Saisis belonging to the wife of Defendt and Defendt. has pleaded that his wife was separated from him quant aux biens — a question of fact must first be determined —

Stuart for Defdt. The action mis conceived as Mrs Cavillier, who is interested in this question is not before the Court — all the parties interested ought to have been parties to the suit. — v —.

Rolland in reply — The attachment goes as well to the monies due by the Tiers Saisis to the Defendt — as to what may be due by them to the Defendt — his wife — & the default of the Tiers Saisis admit the fact of the debt they owe to the Defdt — & the Defendt — cannot be admitted to contest it —

Jones. & Bragg & E contra

On award — & rule to shew cause why it shd. not be confirmed. —

Borton for Defdt — consents to hom. of report but contends that the Pltff. ought to pay costs as he has recovered but a small part of his demand & put Defdt. to necessity of pleading an Incidental Demand —

Osden for Pltff — The Pltff protested ag Defdt

Whitney
v
Chrysler

Action on a Scrip Lott —

O'Sullivan for Defd. submits whether the proof is sufficient, as the deed not sufficiently proved —

Over till Saturday

Boismier
v
Gauthier

Action for article of grant & premises
Wages —

Lawrence for Defd. proof not suffte
as to horse — no proof of demand for one — same
as to the Cow — That Plff has not fulfilled
the engagement he came under to get the deed
of donation ratified —

Roi for Plff — Plff always ready to procure
the ratification in question — it was never demanded
of him — The evidence adduced is suffte

Dumas
&
Plamondon

Action for breach of Contract in not delivering certain Cedar posts —

Boston for Defdt — Not alledged to have that the navigation was open — have not proved the value of the wood — at all events that 1/4 of demand ought to be deducted as 1/4 of wood has been delivered —

Ouellet
&
Dechêne

Pltff. demands Instr — noths said

Vaillancourt
&
Doucet

Cont. from page

his signature, always so considered — opus generally to Pigeau —

1 Pigeau. p. 10. & 11. —

Friday 4th April 1817.

This being good friday there was no Court. —

Saturday 5th April 1817. —

No. 562.

Johnson. } The return of service to be amended —
Nau. — } The Process served at domicile no person being in it — Code Cw. requires, he shd in that case call the next neighbour to be present —

Barsmier. } action dismissed. —
Gauthier. }

Hunt } On Defendr mo. to security for Costs
Bangs } Ogden for Plff. objected to mo. as too late, the cause was entd. on last day of last Term —

Mosher } On Defendr mo. to prolong rule
Lampman } in ex. of Plff. on fait last. —
& Contra }

The Plff moved for a hearing on the Principal demand, as being a distinct from the Incidental

Incidental demand —

Ross for Defd. The demand is founded upon 2 Notes, which were given as Arbitration Notes & the one is a compensation to the other —

—

344.

Johnson
v
Plamondon } action of revendication —

Pltff moved for Judt. on evidence of Record — Defendt in default

Bolton for Defd — no evidence that wood was cut on Pltff land —

—

Dupont
v
Delisle } action for ½ produce of a garden —
& and Contra
—

Grant for Defendt — The Pltff was gardener for Defendt — The agreement stated, not proved as verbal testimony is not admissible — The value of produce estimated by Defendts Expert at £22. —

The Defd. agreed to pay for ½ produce, but makes an Incidt. demand for ½ produce Pltff sold out of the Garden prior to his leaving it —

Lacroix for Plff— The intimation made by Defendt was 6 weeks after Plff left it

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№ 610.

Masse
vs
Guertin

action for articles due on 2 notes —

Bourré for Defdt— The Defendt has made sufficient tender of all he owed to Plff to pay — As to the money he ought not to pay Costs, as he tendered also money upon several of sums, & was only notified he had — he ought therefore to have his costs on summons 200 bundles hay — Moves that evidence of one Lavergne be set aside, as he is called too late to prove the facts stated in his opposition —

Lacroix for Plff— opposed the hay, because the bundles not weight — was then worth 10 doll. & Cts — but was sold by Defdt. for less —

№ 231

Papineau
vs
Wheeler &
al' —

action on promissory note —
on Execution —

Grant for Defendts Defendts not learned

265

severally, but jointly - as not expressed to be a Several undertaking - Potts. Obl. No. 265 - & the Defendrs cannot be condemned jointly -

Lacroix for Plff - refers to Potts. No. 261 - to shew that obligation is joint & each bound for whole. -

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Birthelot
vs
Billanger

On mo. to reject plea & Exceps. dilatory filed by Defdt - as 2 Guins had not been deposited with it -

Roi for Defdt - The Prothy. having rd the Plea & filed it without exacting the 2 Guineas, it cannot now be rejected -

O'Sullivan for Plff - contends for the exception -

Poitras et al
vs
Freseau

On defendrs mo. to quash process, on aut. of defendrs being otherd

Mo. withdrawn -

Park
v.
Stuart } Mo. for Enquête. —

Whitney
v.
Chrysler } action on Foreign Judgt —

O'Sullivan — for Defts. submits whether
proof of Seal of the State of N.Y. be sufficient — it
ought to be the Seal of the United States —

Ogden for Plff, refers to cases cited and
in this Court — when proof of the Seal of the
particular State is sufficient —

Camps. N.P.

Monday 7th April 1817.—

Berthelet
v
Bellanger } v Rule absolute.—

Mosher
v
Lampman. } o Defend^r mo. granted—
&
E contra. Plff. mo. rejected—

Hunt
v
Bamp } v Def^r mo. rejected—

Asylum
v
Cuvillier
&
Baudet &
al^s T. Laini } X Interlocr

Fremle
v
Connant } Parties admitted to their proofs—

Russel & Co
&
Merkell

on Defts mo. for Security for Costs —

also mo. to reject notice of demand —

—

Lamothe
&
Skilly
&
Allan. Gard

On Plffs. mo. to declare rule absolute as. Gardien

—

Tuesday 8th April 1817. —

Russel & Co
&
Merkell. —

Motion dismissed — as two of Plffs are in Montreal & partnership still existing —

Mo. to reject notice — overruled —

—

No. 441.

Dugas
&
Lambot

On Plffs mo. to proceed ex parte —

Ross for Defts — The P

Lefevre —
&
Depossiller

On Defendts mo. for delay to plead

On Petition of Geo. Campbell
a Prisoner

Stuart on behalf of the Crown, contended that the Court has no discretion to interfere in such case — and that affidavits are not sufficient.

—

Hammond
v
Wilson

action for breach of Contract —

1st Count on special agreement —

this over-ruled as regular —

Stuart for Defts. objected to any evidence being adduced to establish a specific contract, as there exists no count to support it — nor can such evidence be received, on the other general Counts —

1. Esp. N.P. 130 — 138 —

Boston for Plff. 1 Chitty. p. 339 — Nelson. Rep. p 116. Alcorn. v. Westbrooke — 1 Bull. N. P. 139 — entitled to give agreement in evidence on the general counts. —

Statement for Defdt— cites case in Dany. p. 24
as posterior to the authorities cited by Pltff— and
contrary to the principles of practice laid down by
the Court in regard of general assumpsits —

Wednesday 9th April 1817

Papineau
v
Wheelerdt } The exception

Jones
v
Brays } Instt. on award

Mumpets
v
Carpenter } Defendt— admitted to pyle Plea
& appear by Attr

Vaillancourt
v
Drouin } The depositions of 3 wits rejected
the deposition of Wr proving the making
of the Defendts mark or cross to the
receipt given by Pltff, allowed to remain of
record

Lavoie
vs
Robin

The Plff allowed to amend on
paying 40/ Costs —

Marotte
vs
Billeaux

The ~~conclusion of Decln~~ part of the
demand founded on the Instt. in the
Inferior Court dismissed — & Instt
on the demand for £ 8. 6. 8 & costs as in the
Inferior Court

De Longueuil
vs
Malbœuf

Action possessoire —

Bedard for Defendt — pleads fin exception
1st. The Plff confounds two actions of complaint
and Reintegrande — concluding to be reinstated as
if she had been dispossessed by violence —
2. The Plff has no right to the land in question
by law all Seigniors are bound to make concessions
to the Censitaires, on their demand; failing which
the land is re-united to the Domain of the
Crown — cites. Domat — Jurr. vo Nullité — Denizt
Ed. No 15 & 42. a Nullité d'Ordonnance is incurred

de plein droit — a demand was made on Pltff. by two notaries to grant concessions of Land in his Seigniory, one of which is that possessed by Defnd.s in May 1815 — The Pltff has therefore lost all right in the land she so refuses to concede. — cites amb. Arrets 321. 322.

The Defts are entitled to a grant of the land & to apply to this Court as holding the powers of the Intendant by the Indication act —

The Seigniors hold their Estates subject to the condition of granting lots to every person claiming it — refer to a case adjudged in Quebec in which Mr. Caldwell was Pltff agt a Tenant who took poss. of a lot of Land in his Seigniory & agt the Tenant was maintained by Judt. of the Court —

That Defnd.s has done no injury to Pltff. & no damages ought to be allowed, & the Costs ought to be allowed as in the Superior Court, as the has prosecuted 20 Suits agt several persons for the same object, as one case was sufficient —

Sewell for Pltff — This is an action en vove de

fait

fait, and the Defendt could not take the law into his own hands & determine the question by taking possession of the property —

The declaration & rules & ors are sufficient & according to usual form —

The proceedings by the Tenant in case of the refusal of the Seignior is to apply to the Intendant as to the representation of the King to get a title — but this does not warrant Defdt to take possession of the land until he had got authority so to do —

The demand made on the Plff, not sufficient, it ought to be by legal proceedings in a Court of Justice —

M^c Crae
v
Quantity of Specie
&
Billings Claim

(See) Robinson's Reports —

On Information to declare Specie forfeited —

Ross for Provt refers to Army bill act 52 Geo. ch. The Coin seized on 25th Sept last on board the Steamboat at St Johns when about sailing for the States —

Ogden for Claim^{t}—

The only question for the consideration of the Court is whether the money seized was intended to be exported — Evidence to contradict the intention, to show how & with what intention the money was put on board the Steam boat — to be carried to Mississippi bay — the claimt ent^{d} his name in the Steam boat as going to Mississippi-bay.

Papineau of Counsel for Claim^{t} refers to the evidence adduced to destroy the appr^{ce} of fraud on part of Claim^{t} —

Fromentau
Picquet
Surpon mis en Cause —

Action for damages for not delivering to Pltff possession of a house let by Defdt to Pltff —

Rolland for Pltff — cites. Poth. Louage. N.° 64. Cg. 70 — nothing pleaded by Defend^{t} to exonerate him, & if it were, the facts not proved —

Papineau for Defdt — The Defend^{t} contracted wth Fromentau personally & for his personal use and

and not for him & his heirs — Therefore all damages accrued after the death of Fromentin on 12 June 1816, cannot be claimed from Defdt — as no person represented him after his death but a Curator to his vacant Succession —

Rolland in reply — The succession of Pltff has suffered, as well as the Pltff himself during his life time the contract ensured as well to the benefit of heirs as to Pltff in person —

—

Platt — } Brook. }

Action of Separation de corps & de biens —

Strcat for Pltff — Demurrer to Plea as insuffte

1st States by Plea, that a former action had been instituted by Pltff agst the Curator of Defdt — pleaded as a chose jugée — This action was dismissed on an exception, the merits were never tried —

2d The action for a maintenance or pension and Judgt thereon — This can be no bar to the present action, qr is on Separation —

3. That since the Interdiction of Defdt was taken off in July 1867, since qd time no ill-treatment has occurred — This no answer, as the taking off the Interdiction was only enabling Defdt. to defend first action —

4 Pltff states no fact as a ground of action within a year & day — But not stated that Pltff & Defendt. lived together — which would be only cause to

5 action prescribed — not outft.

6. That Pltff herself has been guilty of misconduct, & not entitled to the separation demanded — This no cause to preclude Pltff from her demand &c —

7. That matter pleaded in answer to charge of Defendt. for having fraudulently caused his property to be sold to deprive Pltff of her rights therein — The answer to this is a statement of facts qd can be considered as coming under the general plea of not Guilty — and the demurrer to this point applies to the former point, the 6th

Ross for Defde —

The action already brot — was founded on the same facts as the present — & judged on the merits —

The annuity adjudged to the Plff has been regularly pd to her, & shews she abandoned the first action — Vide supra — Poth. Obl. 839, 848 & 849 — ah 888 — 889 — &seq —

to 3. 425 Plea. ater Repse — Vle injure. which may be given up expressly or tacitly —

su Dareau.

Vent — Plff abandoned Defde — therefore not entitled to the separation demanded. Journal des Audiences. 20 Jan. 1672. —

Stuart in reply — The chose jugée — not applicable as the merits on the former action were never in question. nor is an action for maintenance same as present. On the prescription parties must go to evidence, to see whether parties lived together —

Marotte.
Montplaisir
Lal —

action for arrears of rents & pension —
Stuart for Defde Demurr — Not stated between whom the deed was passed —
Stated that wife of Plff was to draw some benefit

benefit from the deed, but does not appear that she was authorized to accept — Not said for what consideration the Defendt undertook to pay — nor at what time the articles demanded became due — Not stated that Defendt were ever put in default

The Pltff has no action for the value of the articles without shewing a demeure of Defdt —

Melroche
Malbone } Nothing for Pltff action for Defdt.

Burt.
v
Forbes. } Action for goods sold & delivered —
Stuart for Defdt — Pltff heard on facts & articles, & his confession can be divided & taken against him —

Boston in reply. Pothier Proc. Civ. 4.e p. 71,
2. Jousse. p. 160 —

Stuart — refers — Robertson v. Marchand. —
Abbott. v Curtis —

Perrault. & Ancelaire. } Action on Obligation — ex parte —

L. M. Viger for Defdt — Oblign founded on a Judgt — y[e] was to be considered as a pawn, if the oblig[n] was not p[d] when due —

Ellis dal & M'Kenzie & Fort dal } on mo. to dismiss Opp. for want of Moyens

Thursday 10th. April 1817. —

No 740

Hunt — & Banys. & contra } On Plff's mo. for enquête on the 14[th] inst —

Gale for Defend[t] contends that he is entitled to fyle Rep[n] also that a further day should be given to him for his evidence —

Dugas & Lanctot } On Plff's mo. to proceed ex parte for want of a Plea —

Ross for Defdt — action in assumpsit — & no notice of demand filed.

Lacoste & Raymond

Laurenger
vs
Gregoire,

On trial bfore Sp. Jury
action of defamation —

Friday 11th April 1817. —

Lamontagne
vs
Whitney —

On mo. for Enquete. —
Defr. objt. — that he has a wits. absent —
& produces an affidavit. —
Bourné for Plff — cause was already fixed the Term
for Enquete, at that time no objection was made —

Arnoldi
vs
Brown
Cur.

On Plff's mo. for a serment supplétoire
action for medical assistance & treatment

Bourné for Plff — the proof made shews that
Plff attended the late Mr Brown, & now is entitled
by Law to serment Supplétoire as to the quantity
of medicines furnished. cités. art. 125. Cout.

Stuart. The serment supplétoire is never
granted upon the suggestion of the party. — and
can

can only be granted Causa Cognita. refer to Poth. Obl. No p. 829

To cas. Arnoldi .v. Pinault

Campbell
v.
Sutherland

action for malicious prosecution

Malice & want of probable Cause

on case — 2. Wilson. 302 — 376

4. Bur. 1971.—

2. T. Rep. 545—

The Evidence having been gone through the plaintiff's counsel, moved that the Court would direct the taking a Special Verdict in order to preserve to the party the question of law arising upon the legality of the arrest of the Plaintiff under one of the Rules of Practice of this Court —

2. Tidd. 799—

The Court reserved till after hearing parties on the case — to determine —

Selwyn N. P.

Stuart on addressing Jury — submitted to the

Jury that they had to determine the legality of the arrest, by the insufficiency of the Defts affidavit, and also upon the illegality of the Rule of practice under which the affidavit was made — 1 Chit. 3. Bl. Com. 154 — to show nature of word, doubt —

The Court-House charged the Jury, that the action could not be maintained without proof of probable Cause and of malice in Defendt — That Jury had nothing to do wt. rule of practice as

Brass
vs
Davis

action on Lease —

Exception —

Bender for Defdt — action cannot be maintained — as the Pltff does not shew that it was founded upon any consideration

Borton for Pltff — the exception is taken to the exhibit filed and not to the demand the declaration states a legal & sufficient demand —

Bender in reply — objects on the motion he has made that the leave filed w.th the Replication is irregular & ought to be rejected

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Vaillancourt
vs
Drouin

To shew cause why Defdt should not be heard on his present supplétoire —

Dr. Droit — Fer. Serment déféré par le Juge — Id. Vo preuve — That the receipt signed by the mark of Pltff in the presence of one W.m — is a Semi-preuve

Poth. Serment supplétoire — Obl. N.o 921. 922 obs 926 —

Rollard for Plff — The mo. is prematur & ought to be dismissed, as it can be suggested only after cause has been heard — Supplon. p. 103 — The cross of the Plff. by a simple writ does not make a demi-jurare — Ib. N. 105 — Polth. N. 832 - 12 — see also 783 —

Ellice. —
&
McKenzie. —
&
Attys Genl opp.

On Plff's mo. to reject the opposn of the Attys Genl for want of moyens

Chicoine
vs
Dauplesse

Action hypothecaire —

Stuart for Defts. pleads by Exception that the action is personal as Defendr ought to have been hypothecaire —

Rollin for Plff, the action is hypothecaire upon to Jur. Vu action hypothecaire.

Stuart in reply — The conclusions are not those of an hypoth. action —

Saturday 12th April 1817.—

Vaillancour
vs
Drouin.

The Court reserve to determine on the mo. for summary supplétoire until after hearing on merits—

Arnoldi
vs
Brown

Same Judgt—

Delisle
Roi dal
Exr
vs
Delisle Lup
mis en cause

Action ag. Defendr to render an Act. of their administration as Exrs;

Beaubien for Plff— The late John Delisle by will bequeathed his property by dividing it into three parts — one of which he gave to the Children of John Delisle with usufruit to his wife— That John Delisle & wife have abandoned their right to the Plffs—. Polk. Substitutions— and therefore rights of Plffs are open—

Rolland for Defdr This is not a substitution but a legs D'aliment to Mad. Delisle— which cannot be destroyed nor done away or. even with her consent as it cannot be transported nor given up to another—

The Executors are in poss. of all the Estate of the Testator, their authority is extensive, but warranted by law. They are entitled to the administration of the property bequeathed to the Children of Mr. Delisle, during the life time of Mde. Delisle — It is prohibited that any partage of the property bequeathed should be made till after the death of Mde. Delisle — Resp.te V.o Transaction — Nouv. Denyt. Vl aliments — Dig. ch. 13. De Transactionibus —

That the substitution is not only in favor of the Children born, but to be born of the marriage between Mr. Genl. Delisle & his wife — and the descendants d.t exp. refers to the descendants of the Children —

That it is only such children who may survive Mde. Delisle who are entitled to the benefit of the substitution not those now alive — if there be no child then living the legacy must revert to the Children of the second marriage of the Testator —

Beaubien in answer — It is enough to constitute a substitution that the usufruct is given to one person and the property to another — This is no Fidei-commis in the Ex.ts as they derived no benefit from it — This is a substitution, whether the motive be as aliments or

or not.- The abandon made by Madame Delisle in favor of her Children is therefore legal.=

The words descendants d'eux refer to the relative words John G. Delisle & Radegonde Berthelot — this explained by another part of the testament — Item, descendans synonimous wt Enfans —

O'Sullivan for Delisle wife accedes to the demand of the Plaintiffs —

Rolland in reply — Mad. Delisle had no Jouissance which she could abandon — the Jouissance was in the Exors, who were to hold it till the decease of Mad. Delisle — The intention of the Testator would be destroyed if the Plff succeed in their demand — the intent of the minor whose education is provided for by the will would be destroyed. Sub. Poth. p. 406 — —

No 416 —

Arnoldi
vs
Brown
Cur adv
Brown Intervt

On mo. of Intervt party to discharge the attachment in this Cause on giving Security — as property seized belongs to the Intervt party personally —

Bourré for Plff objects to mo. as by declaration of the L. Saisi, the articles are declared to belong to the Succession of the late Fraser — Binder it

it would be inimicious to the Creditors of the Estate Mr Fraser to allow the effects to be sold —

Stuart for Inter^{d} party — a considerable quantity of property bought which the claim of the Pltff has been arrested — Security for his debt is all the Pltff is entitled to. —

Caillé & ux
v
Bertrand
&
Matte — mis en Cause —

Action of account —

Sullivan for mis en Cause — the party is entitled to be put in the place & rights of Cessionnaire for rights transferred —

Cites. Poth. Vente 583 — 590 —

Laurin for Pltff — the authority cited not applicable as there is no question here of droits litigieux, or the rights were ascertained & settled by Judt. of the Court — Poth. 597 — shows that Pltff is entitled to the amount of which was P^{d} wth Interest, & therefore the action cannot be dismissed —

Hungerford
v
Lindsay
&
King & Ives

action of Dep^{t} for seizing illegally certain articles belonging to Pltff —

Sullivan for Pltff — states the amount of articles

articles seized, and that he has a right to a Lot thereon —

Ord to 16th —

Trottier & Dubois & Sauvé, mis en Cause

Action pétitoire —

Sullivan for Plff, considers that Experts sh^d be named to estimate issues & rents &c —

Rolland for Defd — The wife of Plff has retaken the instance, as Curatrix —

Laurois & Petrimoulx

Action on Obligation —

Bedard for Defd — The only question is in regard of the sum of £10 paid by Plff from the Bailiff Gauvin —

Lafleur & Loiselle

action for articles of Rents & pension viagere

Bedard for Defd — articles p. same action, q^l was instituted without any previous demand —

1^r. art. in contestation is 15 cords wood — Plff not entitled to this — the Plff bound to deliver a certain corps de bois to Defd — she therefore not bound to furnish

furnish the wood —
2 Milch Cows — on 1st. May 1815 the Defdt. deliv'd to Pltff the Cow. —

3 Cheval. The Defendt — omitted to deliver —

Rollin for Pltff — Defdt. is in poss. of the Carpenter bars — & Defdt bound to furnish all the articles demanded —

in Sanford's case

—

Sanford v Richards

Action for goods Sold

Sullivan for Defdt — Plea — credit of 6 months — proved credit of 4 — action therefore premature — The hardware was sold for Credit by particular intimation of the auctioneer — The Pltff. refused to deliver goods to Defendt — and afterwards advertised them publickly for Sale —

Boston for Pltff — when party does not pay for the goods the auctioneer can sell them at his risk — 1 Esp. 15 —

—

Cadron
&
Cadron } action en rédition de Compte —

Bourré for Defts. } a Curator ad hoc a Tutor should have been named to assist Pltff to the present action Defts 1. Pigeau 65 —

2 Vol. 310 — 1 Bouj. p. 74 — sec. 4 & 5 —

Rollard — action for the mother only. Pltff sufficiently authorised — 1 Bouj. ch. 3. tit. 6. Resp^n v^o Curateur — Dic. Droit. v^o Emancipation —

—

Rouville
vs
Hardie } action to rescind a lease of a house as to certain parts —

Grant for Defd^t — Pltff does not state that she is under the necessity of taking poss^n of the house, but that she intends to do so — action premature — the Defend^t had delay till first of May —

Louap 324 —

—!

Bellamy
v
Beadle

action for goods sold
part not proved

Lacombe
v
Raymond

On mo. to reject plea — as not having been changed according to order of Court —

Rolland for Defdt — won't ask by mistake —

Sylvain
v
Cuvillier

On mo. for a Ca. Sa as Defendt —
Stuart for Defdt — no notice of the motion —

Rolland for Plff — no notice necessary, otherwise remedy given by the Ordre of 1785 would be useless — The course & practice is to grant the Exon as a matter of course — and the counsel for Defdt has been heard —
Due proof — refers to the return of Sheriff —
refers to rebellion en Justice. —

Stuart, considers words due proof to mean more than the return of the Sheriff — the party must be heard and have an opportunity of contradicting the proof adduced — This must be done in Court & not in vacation as being a Judicial act —

Monday 14th April 1817

Witness day.

Gauthier dup
v
Forbes — } Mo. on part of Plff to reject certain Interrogatories on facts charged proposed to them by Plff —

Lacroix for Plff — the Interrog. regard facts not in issue, & further that the facts enquired of by the 2d Interrog. happened subsequent to the interdiction of Gauthier one of Plff —

Lacombe
v
Raimond } On mo. for hearing on matters of law

Tuesday 15th April 1817.—

Witness-day.—

Wednesday 16th April 1817.—

Hagar &al
v
Confrey

On Pltf's mo. to ex. Defendt. on supplementary interrogatories.— q. answers of the party are in contradiction with evidence in the Cause.—

Quesnel for Defendt contends there is no contradiction— Party cannot be rec'd. to a second exam. of Defdt— it is the right of the Judge, but not of the party to examine upon supplementary articles— 1. Pigeau. p. 234— Being sued as Tutrix, she has declared her knowledge and having answered pointedly she cannot be brought up again—

Stuart for Pltf— Fait nouveaux may be put by the Judge where there appears ambiguity in the answers of the party— Blake vs. Beek—

Ferguson
vs
Millard } On Plff. mo. for hearing —
Defd. objects to mo. as he has not had regular notice of the amended declaration
Borton for Plff. notice of amendment as allowed by the Court has been served on Defd —

Park
vs
Bragg } on Plff's mo. for Judgt —
Defend. states that action is founded on a Judgt. - cought not to be allowed. 19

Whitcomb
vs
Curtis } Action on Recognizance as Special bail —
Upon for Defd — no such Recog. as stated no Judgt rendered in the Cause stated in Decln. parties differently stated - one of Steamboat other states of Montreal —
Borton for Plff - proceedings are regular —

Hungerford & Lindsay — & The Kings Intervs

Action to recover value of certain articles seized by Defendt & unjustly retained —

Sullivan for Plff contends that he has made proof of his demand and is entitled to Judgmt — 8 T. R. Potts v. Bell & al —

Ross for Intervs Party — Trading wt. an Enemy is illegal — The goods were seized progressing towards the Enemy, in a bye road — the strongest suspicion lies on Plff — & he is bound to exonerate himself — when arrested, pretended to have a pass — The only pretence now endeavoured to be proved is that the goods were on the way to Missigui-bay — Geit. v. Masson 1 T. R. 84 — 1. Rob. Ad. Rep. 134 — also case p. 192. also case p. 196 — 248 — 2 Rob. Rep. p. 83 — 2. Brown. Civ. Law. 249. 250

Sullivan in reply — There not facts made out to warrant the seizure of the property — vague opinions & suspicions without facts not sufficient The facts proved by Plff shew that no suspicion could exist — he was a merchant at Missigui-bay

The

The transaction open —

Foote. —
Lindsay. —
& The Sheriff Intervs

Similar Case — Revendication
Property has been seized under the
process — and this claimed, with
damages —

Gale for Plff — he had agreed to sell to one
Eager the goods seized & to deliver them — he sent them
w. his Clerk to Laprairie to be deliv. — this was the
only instruction he gave — the Clerk not finding
Eager at Laprairie hears that he had gone to Missisquoi
bay, where he lived & Clerk without informing Plff
proceeded forward w. goods — The Govt. agreed to
deliver up the goods if Defend. had no claim — this
Defd. refused to agree to. — That if the goods were
had been in a situation to be seized, by trading
w. the enemy, yet when war ceases, the Cause
of confiscation ceases — Wheaton on Maritime
Captures & prizes — p. 25 — refers to same principle
in Brown's Civil law —

Ross for Interv. Party — The Plff has shewn
no

no sale to Eager — the bills of parcels are without name, or price — It appears by deposition of Robinson that Eager is a merchant in Montreal — Br. Cov. Law p. 249. 250. — Party not entitled to the goods because not condemned by any prosecution —

—

Beaujeu & Gauthier } action for 200 & costs —

Lavoie for Defd. pleads fin Exception that Defend. is interdicted — & the wife cannot stand in Court without authority from her husband —

Bedard for Pltff — the interdiction of Defd. is only for cause of prodigality — the Pltff not bound to know this, as it was notified to the Notaries as regd — & third persons ought to be made acquainted wth it — the Pltff has sued the Defend. in the capacity they assumed by the act on gs. his action is founded — this act is made subsequent to interdiction —

Puss. Man No 75 — that wife does not want authority from her husband where she is his Curatrix — Denizart. Vo nullité. No 12. 3. Guyot Frcs p. 477. No 3 — 200 & costs due until act is annulled —

M^c Intire
M^c Donald } action of account—

Foucher
v
Pothier } action for malicious prosecution

Bedard for Defend^t— pleads for Exception
that Defend^t as Exec^r was entitled to obtain the
Scellé. 2 Bouj. 297— 6 Jur. Fr. p. 129—
The Pl^ff has not alleged enough in his declaration
to entitle him to his action — Thus no malice —
That Pl^ff ought not to have prosecuted his action
while other suit was pending — That Defend^t
ought to have sued in the Capacity in q^l he acted
Lavoie for Pl^ff — denies facts stated by Def^t

2 Bouj 297.
Esp. 526.
2 Pigeau 266

M^c Intire
for
M^c donnell } action of account

Sullivan for Def^t— The action is double
as Def^t personally & as him also as Tutor to his
minor child, which is irregular — Also an Incidental
demand at French suit of Pl^ff—
Ross for Pl^ff— action is regular — all parties ought
to be before the Court — That the Incidental demand
is

is irregular — it has no connexion with the demand in chief —

—

Munn
Johnson } action for goods sold —

O'Sullivan for Defdt — upon this action Plff has proved something different from what he has alleged — he has proved that Defdt. was a partner in a certain Steam boat — that articles were delivered to one of those partners — but to make Defdt. liable on such proof, he ought to have been sued as a partner or as liable to a partnership debt —

—

Ferguson
Smiles } on Plff's mo. to join causes —

—

Vaillancourt
Drouin } Action on deed of sale —

Rolland for Plff. no room for demurrer

Sappleton — Dandy. pls. &c. Dom. 7. 211 —

Bedard for Defdt — Defend. is entitled to his Suppt oath — upon testimony of Mallows —

Rolland in reply — Testimony not sufficient —

№ 490

Lacombe
vs
Raymond
& al

action of Debt on deed of Sale

Rolland for Defdts pleads fin Exap. that the condition of payt. not arrived — That the refusal of Defdt Lo Raymond, cannot enure to entitle Pltff to have an action as. Catth. Raymond as to her the inability of Ls R. to do the work is the only condition under which she is bound — Oblig. 211 — Plea as to Lo Raymond is issuy, upon which there must be proof —

Ross for Pltff — The refusal of the Defdt. is a breach of the Condition — That Catth. R. having accepted to the Oblign is bound by act of the Defdt.

Lacombe
vs
Raymond

action to obtain possession of a house sold by Defdt. to Pltff —

Rolland for Defdt. pleads fin exap. — That nothing was extorted from him — but is ready to deliver up the poss.

poss. upon getting back the note —
Ross — contends that Pltff is entitled at all events to get possession of house —

Gibb
Nicol } action for value of a horse —

Bourri for Deft — says Pltff has not made proof agt the mother, as Son acted of his own authority — Damages exhorbitant —

Boyd
Jones } On Promissory Note —

Grant for Deft — the note proved not same as that declared upon —
Boston admits a small error in date —

Bréard
Lavigne } action for certain arrears of a pension viagere — Dp pertd —

Rolland for Pltff — Proof made out —

Deshautels
&
Deroches.
&
Deroches.
Oppt

On opposition of Dpt stating
payt made on Execution —

Bourri for Dpt — It was irregular for
Pltff to sue out Expon for monies be[en] paid
paid —

Bender for Pltff — The monies pd were originally
pd. on act of 2d Term of payt — but to avoid
discussion he admitted them on act of the
present Instt —

—

Rainbault
&
Bourbeau
Opp &c —

action en delivrance de leg —

—

Gaudry
vs
Brass

action for work as a mason —
Report of Experts —

Bender for Pltff, asks for Homo. of Report
Boston for Dft — prays for a day over to
ep. wits — upon Experts —

—

Thursday 17th April 1817

Ferguson & Millan — Mo. to set down Cause for hearg rejected because Pltff had not served copy of the amended declaration — the Pltff had served notice on the Dfendt that he had amended his declar in conformity to the order of the Court, by substituting the word Pltff for Dfdt, in two different parts of declar — but the Court held such notice insuffe. —

Stagar. & Confroi — The Court rejected the motion — the Co. will not supply the defect of the party or his omission in not having prepared sufficient or necessary Interrogatives — Ferpillon — p. 112. & 114. No 2. —

~~No 2.~~

No 104

Malbouf & Clement — Action to restore three pews in the Church Lafrenaye of Counsel for Pltff — contrary to the common right that one parishioner should hold more than one bane — There can be no title to a bane under possession however long — Defdt holds three — Durand & Maillane. vo. Fabrègue — The Dfendt has produced no title nor Concession from

from the marguilliers — Id. Vo Banc. no poss. can avail the paris: of the Church, altho' it may of another parishioner —. Lout & Brodeau litt. A. Sow. 9. Denz: Vo Banc d'Eglise. No 1. 2. 3 — Now D. 16. 3. 3 —

Lacroix for Defend — The Plff has no authority to maintain the action — there was no assemblée of the old marguilliers — Denz. Vo marguilliers No 40. & 42.

2. The action cannot be maintained as an action petitoire — no title shewn — It can be considered only as possessy — the Defend not in possession of three of the pews, & therefore the action is irregular as to those pews —. Durand de Ml. Vo Fabrique No 34 — After poss. of a year a parishioner cannot be dispossed of his pew — & therefore these n poss. ought to have been sued, as Defend cannot dispossess them — No proof that Defend ever possessed any of the pews in question —

Bedard in reply — The authority to Plff regular & sufficient — The action is regular & arises from a protest made by Defend that he was entitled to the possession, & held it by the means of other persons — This is proved by the evidence adduced —

Hicks
vs
Carter
&
Drolet
Gar.t

action of Trover & Conversion —

Rolland for Defend.r moves to reject the
dep.s No. 1. 4. & 6. — as irregular, the Wit.s No. 1. A
being related to Plff — No. 6. Bailiff
Wilson, bears a Law suit w.r Def.r Desjillon. No. 419
in all cases where there is a Proces Criminal the testim.y
of Wit.s is rejected — The remaining testimony is
insufficient, the marks given are such as are common
to most horses — That Def.r ought to have his
recours a.t his Garant. Poth. Vente. No. 620. 622 &
No. 623 — Rep.se v.o Echange — 586 —

620

Larroix for Garant. concludes to the rejection of
the depositions of 3 Wit.s for Plff.

Lemoult for Plff. The testimony must be admitted
as it goes to establish fact in a foreign Country where
to a.t such testimony is admissible —
1. Pigeau. p. 281-2 a Wit.s having a suit in a semblable
Cause is only cause of rejection on acct. of that suit —

Bedard for Garant — The Garant offered to return
the horse he had rec.d in exchange from Defend.r
upon any suit brot — & therefore Garant ought
not to pay any Costs — as Plff sh.d have intimated
his intention in regard of his claim for damages —

Bragg
Tilton } Action of Assault —

Sullivan for Defdt — states in mitigation that Pltff insulted Defndt by saying he had taken a false oath — & the aggravated language of Offence to Defndt —

Forbes
Wilson } Pltff moves to Lndt —

Johnson
Hutchins } Action for Seigniorial rights —

Bianchin for Defendt — No Lods & Vents are due to Pltff prior to his acquisition of Seigy — The Cens ought not to altered from what the Contract prior to Pltff's purchase establish — the quantum of Cens is sufficiently established, so as to acknowledge the direct Seigniory. That Seigr can alienate the right of Lods & Vents — cites Pothier — the profits censuels are not essentially requisite to the existence of the Concession — altho' the Cens is — here there is a Cens established by the Contract —

Kimball v. Bourne & Contra

action to recover clothing —
& Incid. demand for board & lodging

Grant for Pltff — only question is for Costs the demand in chief being satisfied — Moves that the deposition of Pltff's son be rejected — £8. 15 — tend. £7. 15 —

Ferguson v. Smith.

action on promissory Note —

Beambeau for Defd — admits that Note is proved, but not the acct — There is no proof of the charge of £15 — in the acct — is included in Note — pleads pay. of the demand

Sullivan for Pltff — The evidence of pay. made subsqt. to the Pltff's wife have left him

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Scott & al v. Bridge & al

action for value of goods deliv. to Defr. to sell.
Grant for Pltff — Pltff has failed to prove agreement. but claims right to amount of Sales —

O'Sullivan for Defrs — tender was made & Pltff's before action —

Grant. — Tender not sufficiently proved. —

Armour dal'
v
Mercine.
&
E contra —

On Report of Arbitrators —
The Com. is consented to —
Nisi for Pltff contends that he
ought to have his full Costs on both demands —
contrary to the terms of the Report —

Millot
v
Stevenson

action for house rent &c —
Grant. for Pltff claims Sup for £18. 13. 8.

Portelance
v
Stone. —

Noth? said —

Stevenson
v
Pugh

Action for goods sold & deliv?
Grant for Defd? objects to evidence
not suff? — particularly as to a Counter —

Logan. —
Gordon dal
&
Bissdal opp?

On Inst? of Distributor
Claim of Whitney objected to as not
being a partnership debt —

Friday 18th. April 1817

Rivard
v
Gregoire

On mo. for Judt. on Verdict on Jury with full Costs —
Defendt. opposed the granting full costs

Black
v
Yule

Poth. Obl. No. 170 —
Rep. Vo Interets. p. 466—467
2 Pigeau —

Quest. as to allowance of Interest upon upon Verdict of Jury —
Statute for Pltff — rapports of all kinds are made assessing the amount of debt & Interest granted thereon — practice in England on this ought not to be followed, as there no Interest is allowed separately but is included in the Verdict as making part of the damages —

№ 790

French
vs
Fidget
et al

on Defend's mo that the seizure of the property belonging to him be discharged as irregular, as the property taken is attached to the Realty — Fr. Pract. Cont. p. 177 art. 90 —

Borlow for Pltff, contends that articles seized are moveables — parties must go to proof —

№ 125

Whitney
vs
Chrysler

Judgt — Foreign Judgt — proof of law considered sufficiently made out —

№ 250.

Foucher
vs
Pothier

Exceptions dismissed

№ 499

Lacombe
vs
Raymond

Exceptions dismissed —

№ 259

Bragg
vs
Davis

Defend's mo. to reject bail filed by Pltff to his Replication, granted — Exceptions dismissed

№ 162

Platt
vs
Brooks

Demurrer over-ruled — matters pleaded by Defend. if true are a sufft bar to action —

No. 402
Lamothe
vs
Kelly
& Allen Gard

attachment granted as the Guardian until he shows superior effects —

No. 572
Beaujeu
vs
Gauthier
Lur —

Plff allowed to call in the Defts wife as Curatrix of her husband

No. 676
Turgeon
vs
Ratelle

Interlocutory for calling in the Crown

No. 224.
Cadron
vs
Cadron

Interlocy, directs Plff to proceed to the nomination of a Curator to assist him —

McIntire
Lee
vs
McDonald

Exceptions dismissed —

Marotte
vs
Monplaisir
et al

Exception dismissed — but the Court considered, that unless it had appeared that a demand was stated to have been made on the Defendants for the delivery of the articles, the action must have been dismissed, as a demeure was necessary to be established before the obligation of the Debtor could be converted from delivering the article he owed to paying a damage in lieu thereof — Poth. Ob. 143. —

Rouville
vs
Hardy

This Instt. was pronounced on 19th —
Judgt — for Pltff —
The Court considered that proof of a necessity, or change of circumstances in the situation of the Pltff, requiring her personal occupation of the house, was dispensed with as the law stood in France, differing in this respect from the requirements of the Civil Law or Lex Ædes —

Gaudry
vs
Bragg

Award confirmed

Stevenson
v.
Paugh } Judgt

Scott & al
v.
Bridge & Penn } Judgt

Armour
v.
Mercer } award confirmed

Bragg
v.
Lister } Judgt £12.10 — damages —

Derhamtte
v.
Deroches
v.
Deroches
Oppt } Judgt. on Opposition

Legault ~ Leduc — Interlocy order prolonged

Raimbault ~ Bourbillon — Judgt — Delivrance de lig —

Trottier ~ Dubois — Judgt — action petitoire —

Fromentan ~ Piquet — Judgt £30 — damages —

Lacroix ~ Petrimoulx — Judgt — bal a Delays

Boyd ~ Jones — Wrong date in Decln — action dismissed —

Perrault ~ Auclair — Judgt — Costs as on a undefended writ

Lepailleur
Turpin
cui ——

Judgt. to account

Burton
Devonne
Catlin & Inters

Action dismissed —
see Judgt. of — was reversed in the
Court of appeals —

Dupont
Delisle
& contra

Judgt —

Masse
Guerlain

Judgt —

Fraser & Taylor
Namur —

Imputation of payments on account
Judgt —

Sanford Ld
Richards & Co

Goods sold at auction
Judgt for Plff

Gobbs
Nichols

Judgt —

Saturday 19th April 1817.—

Hagger
v.
Confroy

action for money had & rec.d by the late Dr Chaboilliz to use of Plff

Defend.— not filed a plea.—

Stuart for Plff.— proves it by a note of one Currie payable to Plff.— they them indorsed in blank to late Chaboilliz — who thereby rec.d part of money & this represents since his death rec.d the bal.ce Poth. Obligs. 38

Hyd. 95
1 Esp. 31.

That a blank indorsment by law of England does not transfer the property, & the Provn. St. is made upon the principle of the laws of England.

The payments made subsequent to Mr Chaboiller's death are proved by Ws. to have been made to our Deshantels, who was the agent of Chaboiller's Estate.—

Quesne for Defts.— action is on a general assumpsit— nothing said that action is founded upon any contract, or note, but that note is brot up in evidence, contrary to the practice.— That Defd. is not a merchr. nor was the late Chaboilliz

a

a Merchᵗ. so as to render this a Commercial transaction — in an action assumpsit the proof by the law of Country cannot be rec^d above 100ˢ. unless there be a writing — & the writing here produced is not declared upon & cannot be received in proof — If this were allowed a deposit might be proved under an action of assumpsit. — If the case can be considered as Commercial the Pltff cannot recover, as he must have shewn the special case under a special action on the Case — Gilb. Ev. 161 — 2 Comyns. Dig. 3. 4 The Defendᵗ is stated to be sued as Tutrix — no such proof before the Court — the orig. Libelle not regularly filed —

Objects to the testimony of Chevrier, as interested — also to testimony of Documents — per 1 am Cause — The note must be considered as being the property of the late Mr Chaboultz under the indorsement Lowless on bills 7. 8 — 126 —

If it is in proof that Chevrier was a Merchᵗ by his own evidence — but whether the case can be considered as a mercantile case or not the action cannot be supported —

Stuart for Pltff – action not founded on any special contract, but upon a fait of the receipt of money from by the late Mr. C– on acct of Pltff–
In this case the note, or a copy of it was filed, so that the Defdt cannot complain of surprise in being sup the proof fait– The quality of Intrip – not necessary to be ascertained by written documents filed on record by Pltff in bringing his action – It was suffte to give evidence of the fait when denied –
A blank indorsement does not convey the property in the note –
The note being in the hands of Cassier is a presumpt of payt– independent of this evidence–

Vaillancour vs Drouin. } Judt for Pltff– the Court rejects the demand for the serment supplétoire –

Vve Pelletier Loiselle. } Judt for articles of Reply & answer The Court gave leave to Pltff to amend his declin on payt of 40/ Costs –

Cantin. vs Leonard and E contra. } Pltffs. action dismissed, & Judt on the Incidental demand &c

Griffin dep.
v
Langan. } Interlocr pr Plff. to give in Statement of monis paid v

Chicoine
v
Dauphine } Plff allowed to amend his Declaration on payt. 40/ Costs. —

Wm Hall
qui tam.
v
One barrel Pork
one de Flour } On Information agt the said articles as illegally imported into this Province from the United States of America through the Upper Province —

Case heard in Vacation — Goods ordered to be restored. —

June Term. 1817.

Monday 2 June 1817.

Platt
&
Brook

On Defdt mo. for hearg. on merits —
Objectn by Pltff, that enquete has not been closed
the non-attendce of Wn is agreed on, but Pltff dd
diligence, to be turned out by frequent attendce

Pothier
&
Foucher

On mo. for enquete — continuance since last
vacation —
Objected that the enquete cannot be had in Term
the practice being contrary —

Foucher
&
Pothier

On mo. for Enquete. —

Gauthier
&
Forbes

On cross motions — Defendt. mo. for delay —
Pltff. for hearg —

French
&
Conant

On mo. for ex. ex parte
objected if Defdt mo. be granted, the action must
fall —

Lefroy. — Dispositions

delay for consideration of Issue — say 4th —.

—

Gordon. — Mardell.

On mo. to conclude enquete — objected — no notice — Act absent — cause of variation —

—

Ferguson — Millar

On mo. for hearing ex parte. — objected that the amended declaration has not been properly notified. —

—

Parks — Stuart

On mo. for cont. of enquete on 7th —.

Tuesday
~~Wednesday~~ 3d June. —

Park
vs
Stuart } mo. granted —

Gauthier
vs
Forbes — } ordered that Defdt appear & answer
on 13th —

French
vs
Conant } Pltff mo. granted — as Defdt has
not pleaded —

Lefevre
vs
Desgroseliers } mo. granted —

Groves
vs
Mandall } mo granted —

Ferguson
vs
Miller } The notice after amendment held
sufficient. mo. granted —

Platt —
vs
Brook } ordered that Pltff justify that his
witnesses were regularly subpoenaed & did
attend —

Pothier
v
Foucher

mo. granted —

Foucher
v
Pothier

mo. rejected, as nothing done in the vacation —

The Sheriff
v
Sargent

on mo. to name Surveyor in lieu of Sylvain of Dept.

—

Woodbury
v
Rhodes

On Defds mo. to ex. a wit. about to leave the Province —
Objected that parties not at issue
Vs Defendt not have pleaded —

Bedard.
t
Delaprave

On mo. for a capias ad the Defendt for not having rendered an act. agreeable to the Judt of the Court in April last —

Avise
&
Villeraye

on mo. to amend the name of Defendt on part. of Forts —

Sullivan for Defts — the Defendts have sued one Villeraye, and DeVilleraye has been served with the process — and no amendment can be allowed to bring into Court another person than the person sued — and also after a plea of mis nomer pleaded — Mo. granted under precedents —

Mosher
vs
Lampman

on Defts mo. for a day to ex. Plff on facts cont —

Terriens
&
Delorgueil

on pertinency of the facts charged —

Bedard for Plff. refers to cases of Cartier & Longueil & Brossieau & Longueil — when same points settled —

Stuart for Defts — the Interrogatories carry

are of a tendency to impute turpitude in the conduct of the parties to be interrogated and also will create a forfeiture of the land & rights of the Defend^{t}—

Bidard for Pl^{ff}, contends that there is no act of turpitude & of forfeiture in the Case—

Bunker
vs
Lally—

On Pl^{ff}. mo. that facts charged be declared aviés & confessés—

Stuart for Def^{t}— service of fait & art. not regular—

Hadden
vs
Taylor—

On mo. for publication of a Com. Rog

Stuart for Dy^{t}. no affidavit of the execution of the Commission & of the identity of their return,

Savary
vs
Meunier

action for debauching Pltff
& getting her with Child —

Marie Jeanne Plante — sage femme — a accouché la Demde. d'une fille en Sept. 1815 — à Pltff Dedans

Marie Aimable Parent, the Pltff. mother was admitted to prove that the Pltff was brought to bed in Septr. 1815 — of a female child —

Elizabeth Monjeau, femme Lemai —
Dans l'automne 1815 elle s'est rencontrée avec le Deffr. chez son fils Theophile Lemai — & en parlant de son affaire il dit que la raison pour laquelle il ne vouloit point se marier que la Demde ne reconnoitre l'enfant dont elle doit accouché pour etre à lui, dont que la Demde. n'etoit trompé de 3 mois — mais en comptant le tems il s'est trouvé qu'il n'y avoit que 3 jours de diffce. à la Deffr. la dessus a dit qu'il ne savoit pas ces affaires la & qu'on lui avoit dit cela —

obj

Paul Desprats vers le 18 ou 20 Avril de cette année en venant de la messe,

il a entendu dire au Defr. que s'il auroit
cru que l'enfant dont la Demde. etoit
accouchée eut été à lui seul, il y a longtems
qu'il l'auroit epousé —

x

Demeure chez la Demde. & occupe sa boutique

Theophile Lemaire — demeure à Ste. Marie —
conn. la Dem. depuis 9 à 10 ans — En Octre
1815 le Defr. vint chez le temoin pour l'employer
dans son affaire — il a refusé, disant qu'il etoit
déjà engagé pour la Demde. alors le Defr.
a reconnu qu'il avoit eu la premiere connexion
avec la Demde. en Decr. & que la Dem. etoit
accouchée en Septr. suivt. & que la Demde.
s'etoit trompée de 3 mois — alors le temoin
lui dit — mon ami tu te trompe, il n'y a que
3 jours tout au plus de difference — Le Defr.
dit alors je n'en sais rien de ces affaires là,
on m'avoit dit que c'etoit de meme — Conn.
la Dem. femme de bon caractere pour qui a present
elle pouvoit espérer un bonne partie etant assez
à son aise, & devant esperer à se marier avec
la ~~Demanderesse~~ Defr. — Croit que la Demde.

a

a souffert un dommage au moins de £300 par défaut de mar- & les moyens de mettre à profit ses effets —

Franc. Leclaire — La femme est Cousine du Défend. — objected — that no testimony of the Défend. can be allowed to be made by a relation. — The Court rejected the Witness. —

Marie Blanchette — Qu'il voulait se marier avec la Demde. —

Louis Robert —

Michel Pelletier — fils de la Dem. âgé de 12 ans — n'a pas sa por. com. — objected — Mr cannot admitted to prove facts in the interior of the house which the turpitude of his mother then infamy, it would be immoral doctrine not to be rec. — Ch. Just. was of opinion to reject Mr L. Reid to admit it — to prove facts wh. passed in the interior of the house —

Evidence closed

Jn Bte Provard, made out a warrant at the instance of Plff. brother at Dept. in Augt. 1815 –

Guillm Forrain – Plff used to get young people to sleep at her house in fall 1814, under pretence of being afraid, in consequence of an attempt having been made to force the door of her house –

Charles Touchet – The Plff told Mr Chew that Wt. be delivered about 8 or 10th July –

Jos: Reignier dit Brillant. assemblée des Jeunes gens chez la Dempse

Jn Bte Reignier – – même assemblée des Jeunes gens chez

Verdict – Find Deft – father of the child – wt £25. for its maintenance & Costs – find nothing for Seduction. –

Friday 6th. June 1817.

Platt. & Brooks — a day given for continuance of Enquete

Rolland & Mailloux — Mo. dismissed — Defdt. should be put upon to appear & answer de novo.

Bunker & Lalley — mo. rejected — return of servis irregular —

Terrien & De Longueuil — Fait & art. declared pertinents —

Hadden & Sayer — Publication of Com. Rog. ordered —

Fraser & Smiles & Desautels — Def Pltffs. mo. to join the oppositions made by Oppt —

Oppt — Oppositions founded upon different rights, & cannot & ought not to be joined

McVey
vs
Taylor

On Defendt mo. to quash process from short session — not being 5 whole days previous to the day of the return —

Boston for Plff — five days were complete before the return —

—

Emery & ux
vs
Archambault

Action for arrears of Rente & pension —

Vigé for Defdt — rente payable d'avance & au besoin of Plff, this clause cannot be exerted offers have been made by Defdt. qt are reasonable in regard of house — Plffs have made no proof. — There are certain seasons for furnishg different articles, & the payt of the articles demanded sho be limited to those times —

Bedard for Plffs — The rente is payable au besoin of Plffs — qt is their demand. — The Defdt have no right to limit the terms of payt —

Vigé in reply — usage & consuetudo. are to be observed in interpreting the Contract & the will of the party —

Brass
~
Davis ... } On undertaking to pay £50. —

Boston for Pltff. asks Judgt —

Bender for Defdt — No consideration
proved pr of the Note or undertaking was made
The proof made by Pltff cannot be admitted
as it tends to prove an agreement above 100th —
and at all events only one deposition — other
not signed — Then Pltff moved to be permitted
to perfect the deposition —

Wood ... —
~
Henry et al } On merits. —

Boston for Defdt. Stem has made proof
of — have pd his share of the debt — Pltff entitled to
his Judgt. as on Sunday only —

Stansfield ... —
Gamden ... — } Both said. —

Raymond
&
Melras } On Exception pleaded by Defr

Vijé – Dr. Droit vr abandonnement –
art. Cout – 102. 103 – Plff can be prosecuted
for arrears of hypoth.

Roi for Defr – Exception pleaded is well founded
& he ought to be heard thereon before going to proof
whether those exceptions be well or ill-founded

– Saturday 7th June 1817. –

Stoddart
vs
Pyrand } on Defrs. mo. for Security for
Costs –

Objected that Plff has had no notice of
motion – that mo. is too late – cause refd
2e Inst –

Stuart in answr – This is only 4e dies juridicus

Vve Valois
to
Leduc

on Pltff's mo. to prolong rule of reference to obtain return of Mr Guy, one of the Surveyors —

Monday 9th June 1817. —

Raymond
to
Melvin

mo. rejected — matter of exception pleaded by defendt must be first heard

Fraser
&
Smiles.
Dishaunted
Appt

Pltff's mo granted.

Tuesday 10th June 1817

Mc Key. — } ~~The Defendt not granted~~ —
~~Taylor~~ — } nothing

Lacombe } Mo. for Enquete on the 13th —
& } Rolland for Deft — allotted to 14 days
Raymond } notice, as last Vacation was allowed to
elapse without proceedgs —

Delaronde } On mo. to put off trial for want of
& } deposition in Cause, — without pay[t]
Forsyth vac } of Costs. —

Stuart for Deft — Party ought to have seen
that the record was compleat before cause was
set down, & not oblige him to go to the expence of
bringing up his Wit

Proteau
&
Laroque

action for Legitime —

Bedard for Pleff — The child the most benefited by his father, is Amable Laroque — He has rec^d almost the hf. of succ. of both his f. & mother — he says the Don. made to him was onerous and not liable to rapport — Amable Laroque ought to rapporter the full amount of the property he rec^d. without deducting the charges — all advantages made by father & mother to their children were a titre de Vente is liable to rapport when made below the value of the property — Don. cuh Pf. Sec. 3. p. 515 — If the revenues ~~must~~ be deducted from the burdens — then w^d be a small deduction in favor of Defend^t — as being greater than the revenues — but this ought not to be allowed under the authy cited — he binds his father & mother — 13,904 to be rapporter —

Pr. Sec. p. 174. 175 —

Doucet has drawn up a statement of what w^d be due to Pleff — on the rapport of Pratiques —

Papineau for Defd^t — The report of Doucet is wrong — he has assumed that Defd^t should make rapport of all the property, he rec^d — without taking into consideration the burdens w^h. if they were charged

Prud. Lv. p. 226 – when revenue of property given is but ½ of the burdens imposed, it is not considered a donation by the parent to the child but a Sale and therefore not subject to any rapport. The report of Doucet is diff.t from the report of Proctors from the statements of Counsel on both sides –
It is true by the death of one of the donors, the burdens on the property were diminished – but this was a thing not foreseen when the act was passed according to which the rights of the parties ought to be determined – Doucet – charges the Legitime on both Successions of father & mother – qt – is not correct, as both together only owe the Legitime –
Dep.t has filed a Statement of Legitime –
Bidard in reply – The legitime is not charged double by Doucet – as it is due as well on the Succession of the father as of the mother – The great question in this Cause is, whether the Donation in this Cause is onerous or gratuite but – this seems clear, that all the property given must be brot. into account in estimating the Legitime at most the legitime must be due on the balance after deducting the charges –

Payet
vs
Payet

On Pltff. mo. for Enquete —

Vigé for Defdr — the parties must be first heard on the Law. —

Rolland for Pltff — There must be an enquete before the Court can know whether the exception applies or not —

Vigé for defdt. the proof not necessary, there being enough before the Court to determine the exception —

Rolland
&
Mailloux

On mo. to bring up anew Defdt. to answer over to an Interrogatory, which has been improperly answered —

Quest. at whose diligence suppose the Wr shd. be brot up.

Barsalou
vs
Poirrier

On hearing on Exceptions pleaded by the Defnd. to sufficiency to the Declr —

Stuart — demand for interest — but not stated that there was any agreement to this effect in the Contract not stated between whom contract made —

Ross for Pltff — Declaration is sufficient —

Poitras
vs
Frereau
&
Poitras par
rep. d'instre

On action en complainte —

Rolland pr Pltff — has excepted to the plea set up by the Defendt — as he claims the land under title, which is cumulating the possession & petitoire —

Rollin pr Defdt. Plea, that he possesses under a title, ought to be allowed to avail himself of his poss. under his title — The Pltff gave this title, & Defdt must be allowed to avail himself of this right as Pltff, under pt he came into possession —

Hadden
vs
Wilson —

On mo. to close evidence. —

Objected by Defendt. that evidence was closed without notice to Defdt —

Wednesday 11th June 1817.—

Payet
vs
Payet

} order that the parties proceed to make proof—

Poitras
vs
Freeman

} That part of Plea rejected which brings in question the title—

Rolland
vs
Mailloux

} ordered that Pltff do diligence to bring up the Defts to answer over on the ~~fait~~ Court
& articles, the subject of Costs to be considered & to be allowed after negligent party—

Roi
vs
Leishmen

} On Pltffs mo. for supplementary evidence by ~~vocal testimony, thus~~ by serment of Pltff — urged to evidence already given from the Defendrs answers to the faits & articles —

Grant for Defts — Pltff agreed to accept £20 for the Calash in question

Papineau & Wheeler } Motion said —

—

Daigneau & Vandal } On report of Practicians —

Pltff. moves for Judt on report

Viji for Defts. The Pltff have not rec'd her hat yarns, the Judt. must not comprehend this object

—

Quittard vs Hagan } On action for rent for use of a Schooner —

Viji for Pltff — only sum to be deducted from the principal is that Pltff has acknd to have rec'd value is £129 —

Beaubien for Defts — Pltff has not proved the number of days the Defts had the use of the Schooner, & must therefore take Defts acknowlt which is only for £62.10 — & not for £129 —

Viji — the No of days is made out by the protest filed by Defts —

Sonitte
vs
Ayliwin
&
Cuvillier
oppts

On exceptions pleaded to the opposition

Beaubien for oppt. The Instt. was not executory as Defdt. at the time execution was sued out - Instt. 20 Feb. 1807 -
Rule nisi absolute 9 Feb. 1815 - Exon issued on 19th Feby. 1817 - The execution appears to have issued on a Rule made in another Cause -

Rolland for Pltff - The Pltff had done diligence on the rule of the 9 Feby. 1815 - was prevented from carrying into effect the Instt. in consequence of oppositions - Marie Anne Tavernier not having proceeded on her execution, the Pltff. was subrogated in her rights - 2. Stuyt N. du Lois par Soulard p. 82. Pothr. Proc. Civ. p. 455. b. - 12°. ~~p. 122~~ -
1 Soulard. p. 123 -

The Defdt. alleged that the Instt. in question has been satisfied - to this the Pltff. answers close jugé -

Beaubien in reply - the rule of subrogation Pltff in the rights of Mde. Pinard do not authorize the Pltff to have sued out a Instt. in his own name - Whereas it ought to have been in the name of Marie Anne Tavernier -

The question touches the chose jugée, it is a matter apt to be proved —

Stuart counsel for Defdt — There was no continuity of proceedings on the Instt. ended after sale of Plff — The present execution has been issued after the moveables, whereas the authority given to Plff, as subrogated in the rights of Madame Tavernier, was after the Lands & Tenements —

Rolland in reply — The Plff was entitled to sue out execution as well after the moveables as after the Lands where the Instt. is in force — as to the chose jugée, no proof is required, —

—

Tavernier
vs
Cuvillier

On mo. of Cl. Smith, to be subrogated in the rights of Plff, owing to the report of proceedings under the order of this Court of 20th Feby. 1816 — Poth. Proc. civ. 458 —

Stuart for Defdt — There existing a saisie of moveables, it is premature to demand an execution after the moveables until it shall appear what may arise upon the levy of the moveables —

The

The suing out by Pltff of an exon of the moveable property was a tacit renunciation to his right of subrogation under the ord of 20 Febr. 1816—

That subrogation to Smith is irregular, he was no oppt— ought to proceed on his own Just— under Ordr— of 1785—

Pickle
Dayvals } Action to recover damages on Sale of unsound tobacco

Stuart for Pltff— In nature of an action redhibitoire
The evidence adduced on the part of Pltff, makes out pltff. case— also consent of Dfts. to take back part tobacco, q^l^ was sent to auction at their request— The difficulty exists wt. regard to tobacco q^l^— was not so returned by Pltff, altho' the agreement was understood to go to the whole— see evidence of Eaps & Wagner— see also evidence of Mr. Armour

Osullivan for Dfts— contends that they are not liable, having sold the tobacco as agents to another person— On 13 & 14 Oct. one of Dfts authorised Pltff to send 38 hgds of bad tobacco to auction of

H. & Shaw arrow — Unab evidence of Eager goes no further than to this tobacco - 38 kegs q.d Gelston had seen in the Pltff. store — The evidence of Wagner does not speak either to any specific parcel of tobacco — or to any particular place where that tobacco was to be sent — The Defendr never authorized this second sale of tobacco — Pltff not entitled to indemnification more than for the 38 kegs, & at a price not above 1/8 of 1%

French
Conant
Val. £

On motion to quash writ of attachment, as having been made upon a realty instead of movable property —

Bender for Defdr — Evidence shows that the movements of a carding mill were urged wh were attached to the realty — & thereby became a part of it —

Boston for Pltff — mo. of Defdr is irregular as it claims dismissal of action, — Evidence that the mill is considered as moveable —

Ferguson
vs
Millaroab

action agt Defend. on bail bond

Stuart for Defts Plff. do not shew a legal assignment of the ~~Judt.~~ Bail bond to him — There is an assignment of the Judt. rendered agt the Debtor, but not of the bail bond — assignment of Judt. by one of the Creditors, on the behalf of his Co-partners, without authority not sufficient besides Co-partnership was dissolved before that time

Ross of Counsel for Plff — There is an assignment of the Bail-bond as well as of the Judt — and is sufficiently stated on the Declaration — One Partner could have given a receipt for the pay.t of the Judt —, and therefore could assign it — a

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Cadron
vs
Cadron

action en reddition de Compte —

Bourré for Defts — says he is ready to account —

Beauchamp
&
Content

action en Sentence Arbitrale —

Stuart for Defdt — The question whether two arbitrators can appoint a third without any difference in opinion, to join in the award — with them — The 3e person so named must be considered as a Stranger — Denys. Vo arbitrage

Rolland for Plff — The Defendt has acquiesced in the Sentence arbitrale, It must be presumed that there was a difference in opinion & that in consequence the 3rd arbitre was named, as he acted with the consent of the parties —
Lacombe Vo Compromis — acquiescence in the award binds the party — Dec. Dront Vo acquiescement —

Stuart in reply — The question must be determined on the pleadings, and not by having recourse to the evidence in the Cause — The authority cited by Plff applies only when award has been rendered by persons having authority — There must at all events a hearing or fact of acquiescement —

Jones
v
Anderson

On Defendt mo. to reject answer to exception as having been filed too late. 1/m.

Archambault
v
Senet

On Defendts mo. to quash process from short service —

Stuart for Defdt. service made on 4 May and return on 2d June, q. was not 5 whole days previous to the return day

Thursday 12th June 1817. —

Beauchamp
&
Corbett. —

Parties to make proof of the facts stated in issue by the Exceptions —

Ferguson
&
Millandal

X Exception dismissed —

Marot
vs
Monplaisir

On mo. for judgment —
rejected as unjuste not closed —

Jones. —
vs
Henderson.

Defendt. mo. dismissed —

~~French~~
vs
~~Conard et al~~

Orton.
vs
Papineau

Damages for assault
Trial by Sp. Jury —

The Plff offered in evidence the deposition
of an absent Witness — objected — that the
Defendt. had only on hour's notice of taking
the examination of the Wt. —

Objection overruled —

Samuel F. Holmes
vs
D. Robertson

Brass
vs
Davis

An undertaking to pay £50

Burden for Defts — no consideration proved — Verbal testimony inadmissible — if admitted to go to show the existence of better proof, as an authentic act appears to have been made on the subject —

Forsyth
vs
Dow

Action for goods sold & delivered.

Bourée for Plff asks for Judgt. on the evidence adduced —

Burden for Defts — the article were delivered to Defts son who acted on his own account — There is no proof of the delivery of the articles —

Friday 13th June 1817.—

Saturday 14th June 1817.—

Witness-days.—

Monday 16th June.—

Lamothe
v
Fouchet
&
Gray Intervs

On mo. of Intervs party to obtain a writ of poss. of part of the lands in the possession of 3rd persons.—

Motion rejected—

Malbouf
v
Clement

Judt— ordering Dfts. to deliver up poss. of pro to Plff—

Clement
v
Malbouf

order for proof—

Clement
v
Malbouf

Do—

4 Hicks
v.
Carter
&
Dobbs. } W Just —

4 Hart
v.
Belrose } W Mo. granted. —

4 Hagadal
v.
Confroy. } W Just

4 Emery
&
Archambault } Just —

Wood
v.
Henry
dal } Just —

4 Carré.
v.
Bertrand
&
Motte mis en
cause — } W Just —

McVey
v
Taylor

Process quashed.—

Archambault
v
Sine.

Same Ludgt.—

Shuter
v
Jones

On Defts. mo: to dismiss action
as Plff being out of Province, and
has filed no power of attorney to warrant
the prosecution of the action —

Stuart for Plff — Plff resides in Province —
but will produce power of Attr Lmore till
to morrow to produce it —

Ogden for Defts — application now too late to
file power of Attys — if not too late, yet
ought to have been inscribed on the list of Exhibits —

Stuart — There is no such penalty as that demanded
attached to the not filing the power of Attys —

Bellanger
v.
Henry

Def^t mo. to be permitted to make
Verbal proof on having made a
commencement de preuve par ecrit —
from Plff. answers on faits & articles

Dupré
dit
Rientort

action to rescind a Donation pour
cause de Survenance d'Enfans. —

Beauchien for Def^t —

Plff has no right of action, having sold his
rights to another person — In B^a Gendron — the
Def^t admits the principle upon the action is brought

Rolland in reply — Plff notwithstanding deed of
sale is still proprietor as there has been no transfert
or tradition of the things sold — Attorney Gendron
could not prosecute the action — Arts. Leprohon
146 Art. 4
v. Saraut — 3 & 4 years —
2 Bourj. p. 147 — Sec. 5.
Ch. 2. Rep^r. v^o Dom^e. 8^e. p. 84 —

Rouer
v.
Turcot

Action for non-performance of certain
Covenants — inputs 100 cords firewood —

Beauchien for Def^t — Plff asks for money, when it
was wood & was due — no demand Def^t to deliver —

The evidence touchg the wood delivered does not shew that it was bad — price of wood valued too high is worth only 15 or 16th — Defend — can be condemned only to deliver wood, di qu can Pltff ought to purchase —

—

Audain
&
Dumouchel
&
Dicaire Gard

} action en Decl: d' Hypotheque —

Vigé for Defd — pleas tender —
No discussion of principal Debtor — For. Va action Hyp — Pltt. hyp. action cannot be maintained without previous discussion —

—

Aylwin
&
Cuvillier
&
Bardet —
T. Saisi

} on Saisie arret on Deft — in hands of Ls Bardet — Pre Paul Amable Brazeau — & Jos. Vincent —

Rolland for Pltff — the Defend has pleaded that T. Saisi owes nothg — this cannot be read — that debt is due to Defds wife — Pltff is entitled as the 3 Tiers Saisis — two of whom are in default & the third has stated what is insufficient — The fact Lawfully proposed

by

Defdr to T. Saisis cannot offend the Pltff —

Beaubien in Replevin — Action is brot to contest Mrs Cuvillier's right — Court here called to decide upon the rights of Mrs C — without her being before the Court — . The exp: is valid —

art. 234. — a Renunciation alone is sufft. to carry just. vide exp: Jan 12. 1795 — — see also — —

Has proved just causes &c — ought to be declared avoués — not have been answered

Stuart of Counsel for Defdr — action is irregular, ought to have been brot. agst — all the parties concerned & Mrs Cuvillier ought to have been made a party

Pltff ought not to benefit by non-appce. of the T. Saisis. at the suit — shows the cause for which the T. Saisis were called in — at all events the T. Saisis should be called in to make their decision

Rolland — The Saisis arrêt is general of all the property of the Defdr — & not to the wife of the Defdr in any separate right —

Lafrance } Rousseau } action for wages —
Lacroix for Defdr — Pltff — has not done his duty —

Roi — Trudelle

Action for price of 20 prs. wheels made by agreement —

Roi for Pltff — wheels when offered, objected to and then & protested, & on qs. protest, Defr admits the agreement between the parties —

Lacoste for Defr — The wheels are not of sufft. good workmanship — & proposes that Experts be named to ascertain the fact —

Griffin — Fraser

On Interlocutory Judt. rendered last Term — & Statements produced in consequence —

Rolland for Pltff. — The damages ought to be allowed liberally as Pltff is the only Sufferer by the act of Lawyers —

Stuart for Defr — The Statement comprehends more than charges that ought to be allowed & no proof —

Ross of Counsel for Pltff — a day ought to be given to make proof on such parts of Statement as are admissible

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Raymond — Meltras

On Exception to sufficiency of Declaration hypothecaire —

Vigé for Pltff — action is well founded, being for arrears as well accrued during Possn. of Defendr as prior thereto —

Vu déclaissement.

then is no liberty stated in declaration of déguerpissement but this is not necessary — see art. 101.

For. Vu abandonnement —

Roi for Defts — The conclusions are taken agt the Defts as well personally as hypothecally — admits that Defts is liable personally for the arrears become on dues his possn — but no conclusion that Defts shd have liberty to déguerpir or to pay the amt. of it is necessary in case of a hypothecary action — refers to For. Vu action hypothecaire —

—

Charron
vs
Lapierre

action for arrears of rents & pensions —

An Exception that Plff is not a widow having no evidence adduced —

Roi for Defts — objects to sufficiency of the evidence

—

Lacombe
vs
Raymond

action to recover from Defts possn of a house —

Rolland for Defts — cannot be bound to give poss. after house until plff return the note given he has of £40 — belongs to Defts — The note was settled — at all events £12 must be deducted — & no costs shd be allowed —

Ross. for Plff — note was given for 4 years rent & only £10 of one annt —

Lacombe
vs
Perrault
Raymond
Sal—

action on deed of sale —

Rolland for Dft. the monies were to remain in the hands of the purchaser till he became sick or unable to work, a condition not stated in the Declaration, nor any proof it was only stated that Dft. refused to do Plff business as a Notary — nor is it proved —

Bechard
vs
Perrault

action for money pd &c

Stuart for Dft. excepts to Decln to the general words, le tout constaté &c nothing to shew that was an obligation on Dft. to pay — Plff ought to have shewn that Dft. owed a debt to the persons to whom the monies were paid on Inst. of distribution —

Lacroix for Plff Decln is sufficient —

Plenderleath
vs
Burbon
&
Sunstall Ter

Ou opposition afin d'annuller —

Beaubien for Oppt — appears the sale being made subject to payt. of the Legacy left by late Genl Christie in terms of the will — sale ct be made without such charge leaving to oppt to claim their rights as they may be advised — refers to decision in

case

case of Dumas. vs. Burton. & Translate oppts in app. 1813 — In the present instance only a part of the Estate is to be sold, on pt. Oppts. have an interest not to have her Legacy applied —

Rolland for Defts — By the accord made between the late Mrs Christie & her Daughters the oppts. the money in question was to remain vested on the Estate, invariable to their children after them dealth — to receive the Interest thereon, but not to touch the Capital — If the rights of the oppts are preserved they can ask no more, — they have no right to touch the principal —

Poth. Hypp. ch. 3 — hypothèque is preserved —
Dc Obl. 564. 12e — p 891 — change of Debtor not without consent —

Beaubien in reply — The Oppts are entitled to one half of the principal on their own right, & this is now due, therefore not to be made a charge on the Estate —

Lefevre & Desgroseliers

Ors pertinency of moyens de faux

Rolland for Plff — in support of faux —

1. Not clothed with formalities of Test. Solennel — authenticity of an act cannot be attacked without
2. an inscription en faux — Rejs. Inscrip. faux. p. 246.

Only one Wt who can write — Rep. Tem. 58.
No. 22. Rep. Vo Signature — & Vo Notaire —

Art. 289. Le Camus. ob. 4. Vol. p. 131 — Nos. 7. 8

1. Duplessis. 590 & seq.

3. Testament not read by Notary — nor by any other person — Rolland was stopped to hear Vigé —

Vigé in answer — acte faux — arises from acte done upon it — such as altering, striking out & falsifying the acte —

Not necessary that 2 Witness shd. be present both of whom can write — Ordre. of 1735 not enregistered in Canada — Pard Not. sous la maniere que les actes doivent se passer —

La Suggestion, is not a moyen de faux —

The other moyens are of the form of the writ, &c. are not moyens de faux —

Tuesday 17th. June 1817

Shuter dsp
vs
Jones. — } Puff allowed to type Pr. of Atts

Morin
vs
Morin } On mo. for Provision by way of aliment for a bastard child —

Bourré for Deft. — No suffe. facts established to warrant motion — That Deft. was always

ready to furnish what was necessary for the maintenance of the child

Lavoie & Dejan & Gauthier opp.

On mo. for proof in vacation — objected that there must be a previous hearing in Law —

On regularity of service of Faits & articles & record that it was made at 10 o'Clock at night — Ordered that parties be heard to morrow.

Payan & Ross vs Martin

Action of false Imprisont —

Rolland for Defd — has pleaded exceptions that Pltff. is not Tutrix of the minor & cannot maintain the action — The appointment of Pltff as Tutrix is irregular being made without avis de parens 1 Bourg. 46 — 1 Pigeau 69 — Repre vo — avis de Parens — 1 Bourg. 54. dub. 6. Repre vo — Minors 1 Pigeau. 70 —

Bedard — The Tutelle is datives in Pays Coutumier.

and

Inst. For. liv. 1. Tit. 23 par. 2. p. 371

The auth. cited by Defr. does not apply — By all cases of proceedings in a Court of Justice, the appointment of Tutor can be made by the Judge without avis de parens —

Rolland in reply. The father can prosecute in his own name for an injury done to his minor child, but not as Tutor —

Cherrier & St Julien. } action for repairs of Church —

Stuart for Defendt —

1. Plffs. are not Syndics legally named —
2. Insufficiency of Demr — Not shown that the Bishop gave authority to proceed —

I retire from the Bench —

Poirier & Proctor } On Exceptions pleaded by Defendt —

Ross for Deft — Not alleged that Plff made transfer of the Estate —

Stuart for Plff. The contract alone is sufficient to entitle Plff to his action without stating hadition —

Belisle ... }
Roger ... }

action en reddition de Compte. —.

L. M. Vigé — The action is instituted by Plff as Tutor to the children of his late brother of the Defendt — Their mother as having lost her droit de Tutelle by a second marriage with Defendt —

The Defendt by her 2. marriage did not lose the Tutelle of her children, as no Jugt declared her deprived (decheu) of that right — This penalty exists only under the Civil Law but not under the Customary Law — The Defendt was not called to the election of a new Tutor — The widow is not deprived of her right of Tutelle, except when the 2d husband is wasted a dissipated — 1 Bouj. 59. 42

1 Bouj. 59.

2. Pigeau. 27. The widow bound jointly wt 2d husband for her administration, altho' she cannot institute an action — Denizt. Vo Tutelle — No 56.

Rolland for Plff — The widow loses her tutelle by 2d marriage — refers to Bourjon — Last Paper is express — Rep. Vo Tutelle. p. 311. & 316 — Dic. Droit Vo Tutelle — The appoint of another person, if irregular, is a cause of destitution, but the appointment is valid —

Vigé — The appointment of Plff was irregular & cannot avail — the widow ought to have been called for the validity of the appointment — till then she was entitled to act as Tutrix —

Payet
Payet

Action for arrears of rente & pension

Vigé for Deft'd — pleads — chose jugée by award of arbitrators named by the parties —

Rolland for Pltff — demand not juste. the rente is payable at St Michel — in Jan 1816 — there was a difficulty between parties towards rent in 1814 & 1815. but nothg further, as nothing was then due beyond St Michel 1815 —

admits that the tonsure de mouton is not intended to be included in the demand —

Vigé for Deft'd — The compromis necessarily embraces the object of the wood, by wch only Pltff could support his claim — The Pltff has given his quittance in the terms of the award —

—

Wurtele
Lefevre

Action for sale & delivery of flour —

1 Pyke 256.7
Obl. 9 22.931

Lacroix for Pltff — The weight of evidence is on the part of Pltff therefore claims that the serment supletoire be deferred to Pltff —

L. M. Vigé for Deft'd — The oath cannot be deferred to the Pltff — the reason given is because Deft'd has not answered to the faits & articles — The proof of Pltff — as to £27 & 28 — but no more — The

Deft'

Defend. has answ. fully to the Juris. Act —

Hadden
vs
Taylor
&c

On hearing — Defend. contended he had filed a plea — This was granted —
Action of assumpsit for monies had
Ross for Plff — Defend. was the Clerk of
the Plff. & thus got poss. of the monies of Plff
& for wh Indt — ~~is was given~~ demanded — Can proved
exapt for about 1000 dollars — Smith v Jamison
5 T. R Clerk v Shee — Comp

Stuart for Dft — The testimony is wholly
insufficient to support the action — Does not
appear that Defd. ever rec. the money from the
Bank on act. of Plff — The acknowledgment
of Defendt — of have taken the money, is not alone
sufficient, nor can it be received, as being about a
matter above 100 ℔ — If a felony in taking the
money has been committed, a Civil Court
cannot be maintained, even altho' felony has
been committed in a foreign Court —

—

Vienne
vs
Tessyman

action on promiss. Note — Defend. on
Jus. as to Service of Writ &c —

Delisle dus
vs
Poro. —

action en bornage —
non fs proof —

Tesserman
vs
Storrs —

action fs board & lodging — Defendt
see proof —

Roi
&
Girouard

action fs goods sold & deld
Bond fs Defdt shewd by receipts fayt
of £30 — Lower only £10

Roi fs Plff — contends that proof is suffte —

Solivet
&
Solivet
&
Garant

action fs arrears of Rents —

Belanger
&
Sauciér —

action fs house Rent
Roi fs Plff asks his Incidt. or Defendt
has not ans: to faits & articles —

Guy
&
Levesque

Ets draw Interlocr

M.c Intire
ñ
M.c Donald } To draw Just.e — to amt —

Allen
ñ
Pearlee et al
&
appt.s — } De — do

Marcott
ñ
Lebeau — } Action pr prix de vente d'une coupe de bois —

Lacroix pr Defd.r — the coupe de bois has never been deliv.d to Defr no road to get at it —

Bertrand
ñ
Beautron } For arrears of rents. —

Lacroix pr Defr Pltff has no title to prosecute the wife cannot be Curatrix of her husband
1 Bury. 77.79 Domat. liv. 2. Sec. Son 2. Curateur
1 Carou. p. 73 — 2 Pigeau. p. 91

Durant
ñ
Valois — } Action pr Rent — & Saisie Gagerie —
Bender contends Saisie ought to be set aside as effects were irregularly seized —

257 Louage Rollin pr Pltff. cites Polth. Louage No 257.

Bellanger
Henry

action for House rent —

Grant — no right of action of Dft who acted as agent of one Kelly —

Wednesday 18th June 1817. —

A Commission was read appointg Mr Saml. Sherwood, an attg & Solicitr in this Province.

Brook —
Brook —
Platt. Opp.

On Defendrs motion to obtain monies levied by Sheriff, sauf a rapporter, on giving Security. —

Bedard for Dft — Plff comms — only objn is by Oppt. the wife of Dft. under pretended rights of Separation —

Stuart for Oppt — Court cannot dispose of the money before determg the rights of the parties — only granted in case of Aliments. — 2nd. how far monies may be put into hands of 3rd persons under order of Court —

Bedard
Delaspare

action of account —

Bedard for Plff — the act. has been rendered. but Dft. retains in his hands a sum of £100 unjustly — the Dfts claim has been limited to £37. 6. 8 — this Plff admits & asks just for balance — & Incid. demand dismissed with Costs —

Stuart for Dfts. The Incid. demand is well founded upon the

ground of it being supported to the extent of £37. 6. 8
Bedard in cas — no room for an incidental demand, as Defr had the monies in contest in his own hands —

—

Noreau
&
Lalonde } action for damages for value of a batteau
No sea facts & art.

—

Descelles
&
Sauvage
&
& Contre } On rule obt. by Defendr — why Plffs. action sho not be dismissed & Judt. entd. in favor of Defts
Plffs pr Defts asks Judt — on his incidental demand
O'Sullivan, it is a question still before the arbitr whether the Defr should be admitted to be heard on his oath — The proceedr are irregular & award must be set aside —

—

Bridge
&
Dequoi } action for goods sold & delivd —
O'Sullivan — difficulty appears a report at the bottom of the act — on fait sans frais. —

Joubert
&
Sobin — } action of revendication of a horse — of. Plff lost & came to hands of Defr —
Papineau for Defr — purchased horse at public auction & thereon ought to be held to return horse or to pay what he Defr pd for him —
Stuart in reply — horse is in poss. of the Sheriff & Plff must have an order on Sheriff for delivery

Bourassa
& Bourassa } action for monies laid out on acct. of Defdt
in purchasing hay for him for the Garrison of
Chambly —

Stuart for Defdt — The award of arbitrators must be
confirmed & action dismissed — Mo. to reject affidavit —

Burton
& Roi — } action to recover poss. of lot of land — with[s] said —

Rainbault
& Bouthillier } on action to make Inventory & render acct —
consent to Jugt

Gordon &
& Mendell } action pulitorie —

Bolton for Defdt. moves to reject depos[n] of Wm Astley
as having been irregularly heard —

No proof of the marriage of the person to whom
the deed of Concession was made — Evidence not suffte
of marriage between Pltff & wife — It appears by evidence of
Mrs Hall the mother of Pltffs wife is still alive —

Stuart for Pltff — The poss. & status in the party is sufficient
Rep[re]. Vo Legitimité. p. 350. & Seq. — Astleys evidence
ought to be rec[d] —

Hadden
Hart } On mo. for Dft. to change conclusion of plea

Lamontagne
Whitney } Action to rescind a lease —

Bourré for Plff — refers to cas. Guy v Wolff for
1816 — Dec. Court. Va Bank — Bury.
Poth. Louage 283. Repr Bail à loyer —

Stuart for Dfts — Decl. states 2 leases of gd — it demands the
rescision — on wh Dfts. & a sub lease to one Bancroft
who is no party to the suit — Sublease. the whole
not prohibited — see Poth. Louage Nr 283 —
There shd be a preliminary Suit — order party to
comply w his lease — Id — The only right of Plff
in this case wd have been for damages —

Bender
Contois } action for fees & disbursements —
Stuart for Dft — No proof — parole testimony
not suffte —

M^c Crae -
v
O Kegs Tobacco
&
Goodsell claim^t

On claim - for horses & Sleds seized
wt. the Tobacco -

O'Sullivan for Claim^t - contends that he is
entitled to have restoration -

Thursday 19^th - June 1817 -

Bergeron
v
Cadieux
&
Board off^rs

On mo. for pay^t - of Money on oppos^n -

Ferguson
v
Millar
&
al -

Mo. that Defend^r - be permitted to
surrender Malcolm Macdonell the
original debtor - & to shew Cause to money why
all proceedings shd. not be stayed on
consequence on the present action -

Objected that Defd^r were too late, as Just^s
had been given upwards of 2 years aft^r the s^d. Macdonell
& a non-est inventus returned aft^r him -

Stuart in reply - The bail have an undoubted right of surrender
in regard to the Pl^ff the intent of Def^t is not concerned - to morrow the interests
of the Pl^ff in regard of this surrender will be discussed -

The Court granted the surrender, saving the rights
of the Pl^ff. -

Orton
vs
Papineau — on mo. for Verdict with full costs. —

Lacombe
vs
Raymond — Judgt — that Defdt deliver up possession of lot of land sold —

Richard
vs
Perrault. — action dismissed —

Ayotte
vs
Cuvillier.
&
Bardet.
et Lapierre — Ordered that Mr Cuvillier be put in suit —

Morin
vs
Morin. — mo. granted

Ferguson
vs
Smiles. — Judgt —

Lacombe
vs
Raymond — Judgt

Raymond
vs
Mellus — Leave to amend on payt. of 40/ Costs

Payan
&
St Onge

Exceptions dismissed —

Plunkett
v
Burton.
&
Robertson
& Trustall
oppts

Opposition dismissed —

Belisle
v
Roger dep

Exception dismissed —

Roi
v
Leishman

action for value of a Calash —

Roi for Plff contends that the Sermont
Supplétoire ought to be kept to Plff

Grant for Defdt — Plff has made no proof
and not entitled to the supplétory oath —